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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 146

JOSEPH T. HIGGINS, COLLECTOR OF INTERNAL REVENUE FOR THE THIRD DISTRICT OF NEW YORK, PETITIONER

vs.

JOHN THOMAS SMITH

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 28, 1939
CERTIORARI GRANTED OCTOBER 9, 1939

SUPREME COURT OF THE UNITED STATES

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vs.

JOHN THOMAS SMITH

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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In United States Circuit Court of Appeals for the second
Circuit

L 66-54

JOHN THOMAS SMITH, PLAINTIFF-APPELLANT AND APPELLEE

vs.

JOSEPH T. HIGGINS, COLLECTOR OF INTERNAL REVENUE FOR THE THIRD
DISTRICT OF NEW YORK, DEFENDANT-APPELLEE AND APPELLANT

(Cross Appeals)

Statement under rule XIII

This action was commenced on or about the 12th day of January 1937, in the District Court of the United States, Southern District of New York, for the recovery of an income tax refund in the sum of \$7,569.44.

Thereafter and on or about the 14th day of April 1937, issue was joined by the service of defendant's answer.

On or about January 20, 1938, this action was consolidated for all purposes with another action in the same court entitled Mary A. Smith, Plaintiff, against Joseph T. Higgins, Collector of Internal Revenue for the Third District of New York, Defendant.

The consolidated action was tried before District Judge Mortimer W. Byers and a jury on the 23rd, 24th, 25th, 28th, and 29th days of March 1938.

At the close of the case and after plaintiff's motion for a direction of verdict and defendant's motions for dismissal and direction of verdict, the Court charged and submitted the case to the jury which returned a verdict in favor of plaintiff in this action in the sum of \$28,935.49, together with interest.

Judgment thereon was entered on the 10th day of May 1938. Plaintiff appealed therefrom on or about the 15th day of July 1938, and defendant appealed therefrom on or about the 5th day of August 1938.

Plaintiff appeared by David Sher, his attorney.

The defendant was represented by Lamar Hardy, United States Attorney for the Southern District of New York, Robert E. Pratt and Arthur L. Jacobs of counsel.

There has been no change of parties or attorneys since the commencement of this action.

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JOSEPH T. HIGGINS VS. JOHN T. SMITH.

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In United States District Court, Southern District of
New York

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JOHN THOMAS SMITH, PLAINTIFF

vs.

JOSEPH T. HIGGINS, COLLECTOR OF INTERNAL REVENUE FOR THE THIRD
DISTRICT OF NEW YORK, DEFENDANT

Summons

To the above named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable John C. Knox, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, this 7th day of January, A. D. 1937.

[COURT SEAL]

CHARLES WEISER, Clerk.

DAVID SHER,

Plaintiff's Attorney,

*Office & Post Office Address, 1775 Broadway, Borough
of Manhattan, City of New York.*

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In United States District Court

[Title omitted.]

Complaint

The plaintiff by David Sher, his attorney, complaining of the defendant, alleges:

First: The plaintiff is, and was at all times mentioned herein, a citizen of the United States. He now resides at Southampton, New York. During the years 1932 and 1933, he resided at 1115 Fifth Avenue, Borough of Manhattan, City of New York.

Second: The defendant is, and has been since January 28, 1935, the Collector of Internal Revenue for the Third District of New York and is a resident of the Southern District of New York.

Third: On or about March 15, 1933, the plaintiff duly filed with the Collector of Internal Revenue for the Third District of New York his Individual Income Tax Return for 1932, accurately reflecting the basis for the computation of tax liability shown thereby. A copy of the said Return is annexed to Exhibit A, hereinafter referred to, and is hereby made a part hereof.

Fourth: On or about March 11, 1935, the Commissioner of Internal Revenue notified the plaintiff of the assessment of a deficiency for the year 1932 of \$52,784.16, tax, and penalty.

Fifth: On or about July 3, 1935, the plaintiff paid the defendant the aforesaid alleged deficiency of \$52,784.16 plus interest of \$4,785.28, making a total payment of \$57,569.44, which said sum was erroneously, illegally and wrongfully collected from the plaintiff by the defendant.

Sixth: On or about October 2, 1935, the plaintiff duly filed with the defendant a claim for refund of \$57,558.71 of the aforesaid amount with interest.

Seventh: On or about January 22, 1936, the plaintiff received from the Commissioner of Internal Revenue a notice of disallowance of the aforesaid claim.

Eighth: On or about May 1, 1936, the plaintiff duly filed with the defendant an amended claim for refund of the aforesaid sum of \$57,569.44 with interest. A copy of said amended claim is attached hereto, made a part hereof and Marked Exhibit A.

Ninth: On or about November 10, 1936, the plaintiff received a letter from the Deputy Commissioner of Internal Revenue proposing to disallow the aforesaid amended claim. More than six months have expired since the filing of the amended claim.

Tenth: On or about October 28, 1929, the plaintiff purchased 2,000 shares of the common stock of General Motors Corporation for the sum of \$104,350.00. On December 29, 1932, the plaintiff sold and delivered the aforesaid 2,000 shares of General Motors Corporation common stock to Mary A. Smith, his wife, for the sum of \$24,500.00, the market value of said stock on the day of said sale. The plaintiff executed and delivered to his wife a bill of sale for the aforesaid stock and attached requisite transfer stamps thereto in the amount of \$16.00. The plaintiff endorsed, for transfer to his wife, certificates representing the aforesaid stock. The stock was transferred on the books of General Motors Corporation from the plaintiff to his wife and new certificates were issued to her. The plaintiff's wife is still the owner of the aforesaid stock. She has received all the dividends therefrom, reported them in her Federal Income Tax Returns, and paid income taxes thereon. On the date of the sale, the plaintiff was indebted to his wife in the sum of \$50,000.00, which he borrowed from her on April 5, 1932. On the day of the sale, the plaintiff purchased from his wife 117 shares of common stock of Standard Oil Company of Indiana for the sum of \$2,530.12. The plaintiff gave his wife a check for \$28,030.12, the net amount due from him to her after all the foregoing transactions.

Eleventh: In his Income Tax Return for 1932, the plaintiff reported a loss of \$79,866.00 on the aforesaid sale, which loss was disallowed by the Commissioner of Internal Revenue and is part of the basis for the alleged deficiency demanded by the Commissioner and paid by the plaintiff on July 3, 1935, as aforesaid.

Twelfth: The defendant erroneously, illegally, and wrongfully collected from the plaintiff the sum of \$9,983.25 plus interest of \$1,357.52, in respect of the aforesaid transactions. No part of said sum has been repaid to the plaintiff and there is due and owing to the plaintiff from the defendant the sum of \$11,340.77, together with interest thereon from July 3, 1935.

Thirteenth: On the respective dates set forth below, the plaintiff purchased securities as follows:

Date of purchase	Name of company	Number of shares	Cost
Oct. 19, 1930	Electric Auto-Lite Co.	500	\$19,575.00
Aug. 30, 1928	Firestone Tire & Rubber Co.	100	17,525.00
Sept. 10, 1928	Exchanged for 500 shares new stock.		
Dec. 2, 1929	Gaynor Electric Co.	332	50,000.00
Jan. 2, 1930	Investrad Corporation	1,553	33,498.65
Jan. 2, 1930 to Oct. 8, 1930	National Baking Co.	18,324	87,328.65
Mar. 15, 1925 to Dec. 15, 1930	National Sugar Refining Co.	200	25,875.00
Nov. 1, 1930	Exchanged for 800 shares new stock.		
Nov. 25, 1928			

Fourteenth: On or about December 29, 1932, the plaintiff sold and delivered the aforesaid securities to Innisfail Corporation at the following prices, each representing the market value of the stock on the day of the sale:

Name of company	Sale price
Electric Auto-Lite Co.	\$9,000.00
Firestone Tire & Rubber Co.	6,500.00
Gaynor Electric Co.	3,320.00
Investrad Corporation	6,879.80
National Baking Co.	18,324.00
National Sugar Refining Co.	16,900.00
Total	\$60,923.80

Fifteenth: Innisfail Corporation was organized under the laws of the State of New Jersey in 1926 and the plaintiff became the owner of all of its capital stock. The plaintiff maintained a running account with Innisfail Corporation. Immediately prior to the aforesaid sale, the plaintiff was indebted to Innisfail Corporation in the amount of \$68,364.68. He delivered the aforesaid securities valued at \$60,923.80 and gave Innisfail Corporation a check for \$7,440.88 to balance the account. The plaintiff executed and delivered to Innisfail Corporation a bill of sale for the aforesaid securities. The plaintiff endorsed for transfer to Innisfail Corporation certificates representing the aforesaid stock. Requisite transfer stamps were attached in the amount of \$1,732.72. The stock was transferred on the books of each of the aforesaid companies from the plaintiff to Innisfail Corporation and new certificates were issued to Innisfail Corporation. It has received all the dividends therefrom and reported them in its Federal Income Tax Returns. It has never reconveyed any of the aforesaid securities to the plaintiff.

Sixteenth: In his Income Tax Return for 1932, the plaintiff reported a loss of \$174,811.23 on the aforesaid sale, which loss was

disallowed by the Commissioner of Internal Revenue and is part of the basis of the alleged deficiency demanded by the Commissioner and paid by the plaintiff on July 3, 1935, as aforesaid.

Seventeenth: The defendant erroneously, illegally, and wrongfully collected from the plaintiff the sum of \$21,851.40 plus interest of \$2,971.35, in respect of the aforesaid transactions. No part of said sum has been repaid to the plaintiff and there is due and owing to the plaintiff from the defendant the sum of \$24,822.75, together with interest thereon from July 3, 1935.

Twenty-second: The plaintiff denies that any part of the deficiency asserted by the Commissioner of Internal Revenue for the year 1932 was due to fraud. The plaintiff's return, a copy of which is annexed to Exhibit A, and is made a part hereof, was prepared in good faith and accurately reflected the basis for the computation of tax liability shown thereby.

Twenty-third: The defendant erroneously, illegally, and wrongfully collected from the plaintiff the sum of \$17,594.72, in respect of the penalty for the year 1932. No part of said sum has been repaid to the plaintiff and there is due and owing to the plaintiff from the defendant said sum together with interest from July 3, 1935.

Wherefore, plaintiff demands judgment against the defendant in the sum of \$57,569.44, with interest from July 3, 1935, together with the costs and disbursements of this action.

DAVID SHER,

Attorney for Plaintiff,

*Office & P. O. Address, 1775 Broadway,
Borough of Manhattan, City of New York.*

[Duly sworn to by John Thomas Smith; jurat omitted in printing.]

Exhibit A, annexed to complaint

TREASURY DEPARTMENT, INTERNAL REVENUE SERVICE, REVISED

JUNE, 1930

AMENDED CLAIM

To Be Filed With the Collector Where Assessment Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

- ☐ Refund of Tax Illegally Collected.
- ☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- ☐ Abatement of Tax Assessed (not applicable to estate or income taxes).

Collector's Stamp—Received Claims Div. May 1, 1936, Collector of Internal Revenue, Third Dist. N. Y.

STATE OF NEW YORK,

County of New York, ss:

Name of Taxpayer or purchaser of stamps, John Thomas Smith.
 Business address, 1775 Broadway, New York, N. Y. Residence,
 Southampton, New York.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed, Third District, New York City.

2. Period (if for income tax, make separate form for each taxable year), from January 1, 1932, to December 31, 1932.

3. Character of assessment or tax, Income tax and penalty, including interest thereon.

4. Amount of assessment, \$-----; date of payment July 3, 1935.

5. Date stamps were purchased from the Government-----

6. Amount to be refunded, \$57,569.44.

7. Amount to be abated (not applicable to income or estate taxes), \$-----

8. The time within which this claim may be legally filed expires, under Section 322 (b) (1) of the Revenue Act of 1932, on July 3, 1937.

The deponent verily believes that this claim should be allowed for the following reasons:

The taxpayer, on July 3, 1935, paid the Collector of Internal Revenue of the Third District, New York City, the total sum of \$7,569.44 in payment of assessment of a deficiency for the year 1932 of \$35,189.44, a penalty of \$17,594.72, and interest of \$4,785.28. The reasons why the taxpayer believes that the \$57,569.44 should be refunded, with interest, are as follows:

I

The taxpayer denies that any part of the deficiency was due to fraud and contends that his return, copy of which is made a part hereof and marked Exhibit A, was prepared in the utmost of good faith and accurately reflected the basis for the computation of tax liability shown thereby. He, therefore, claims a refund of the penalty of \$17,594.72.

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II

Contributions of \$1,005.00, deducted by the taxpayer on his return, were disallowed for the reason that the taxpayer's capital net loss was in excess of his ordinary net income.

The taxpayer claims that ordinary net income should not thus be reduced by the amount of capital net loss in computing the base for the 15% limitation on the deduction allowed for contributions. The taxpayer, therefore, claims a refund of \$607.05 on this item, plus \$82.55, paid as interest thereon.

III

The capital net loss of \$516,965.96, reported by the taxpayer on his return, was reduced by \$276,659.11 as follows:

(1) The loss reported on the sale of Chrysler Corporation stock was reduced by \$21,981.88 through the application, by the Commissioner, of the rule of "First in, first out."

The taxpayer owned 25,477 shares of Chrysler Corporation no par stock which had been acquired from time to time and which was carefully kept in lots according to cost and date of acquisition. 24,100 of these shares were held by a bank as collateral for a loan and 1,377 were in the taxpayer's possession. On October 28, 1932, the Chrysler Corporation called its no par Common stock and issued in exchange Common stock of \$5.00 par value. The taxpayer later sold 13,500 shares of his Chrysler stock. Against the first 5,000 shares sold, there were delivered no par certificates out of the block held by the bank, the actual cost of which was accepted by the Commissioner. The broker then informed the taxpayer that, in the

future, \$5.00 par certificates would be required for a good delivery. The taxpayer thereupon, on November 16th, exchanged the 1,377 no par certificates in his possession for \$5.00 par certificates and instructed the bank to do likewise with the 19,100 shares remaining in its possession, which it did on November 17th. The stock exchanged by the taxpayer was comprised of five different lots ranging in unit cost from \$18.75 to \$61.00. The stock exchanged by the bank was comprised of six lots ranging in unit cost from \$18.75 to \$33.00. In each case the new certificates of \$5.00 par stock, received in exchange, were immediately substituted for the old no par certificates in order to preserve the various lots and continue them in effect with the new \$5.00 par certificates.

Of the balance of 8,500 shares sold, 1,277 shares were delivered from the stock in the possession of the taxpayer, of which 1,251 shares were applied against sales and new certificates for 4 shares and 22 shares, respectively, were returned to the taxpayer. The Commissioner permitted the identification of the 1,251 shares and also accepted the cost of the 26 shares which were returned to the taxpayer and which he retained. The remaining stock delivered against sales was taken from the block held by the bank.

Although the Commissioner claims that the identity of 5,623 shares was lost in the exchange of no par stock for \$5.00 par stock, in applying the rule of "First in, first out" he used the cost of the same lots as the taxpayer, with the exception of 1,789 shares which remain in dispute. The taxpayer claims that the identity of these 1,789 shares was not lost, that the cost of the old no-par shares was continued in the form of the \$5.00 par certificates, that he intended to sell the 1,789 specific shares from the specific lots, that he actually succeeded in carrying out his intention, that the rule of "First in, first out" should therefore not be applied, and that the computation

of cost contained in his return is correct, except for a reduction of \$74.00 made by the Commissioner in readjusting the cost of 14 stock rights, to which the taxpayer accedes. There is attached hereto and marked Exhibit B a table, compiled from the records of the taxpayer, showing the certificate numbers of both the no-par stock and the \$5.00 par stock delivered against the sale of the entire block of 13,500 shares and the identification as to unit costs of the various lots.

The taxpayer claims a refund of \$2,738.49 on this item, plus \$372.38 paid as interest thereon.

In the alternative:

(a) If it is determined that the "First in, first out" rule is to be applied, still the capital loss reported by the taxpayer on his return should not be reduced by \$21,981.88 as alleged by the Commissioner, but by \$20,589.88. In applying the rule of "First in, first out" to the stock sold from the block held by the bank, the Commissioner used the cost of the 126 shares left in the block in the taxpayer's possession. There certainly could have been no mingling between these two blocks and the Commissioner, in applying the rule, should have confined himself to the first purchases in the block held by the bank. Had he done this, the cost computed by him would have been \$1,505.68 higher, as shown by the following:

Cost of 126 Shares

Commissioner's application to "first in" of block held by the taxpayer:

	Unit cost	Total cost
104 shares @	\$18.04	\$1,876.16
22 " @	18.67	410.76
		\$2,286.92

Correct application to "first in" of block held by bank:

126 shares @	\$30.10	3,792.60
--------------	---------	----------

Difference ----- \$1,505.68

15 The taxpayer claims that if the "First in, first out" rule is found applicable, the foregoing revision of cost should be made, with a refund on this item of \$188.21, plus \$25.59 paid as interest thereon.

(b) The taxpayer further claims that the Commissioner erred in recomputing the unit cost of a lot which the latter used in applying the "First in, first out" rule.

In 1924 the taxpayer purchased 4,010 shares of Maxwell Class A stock for \$297,780.87. When the Maxwell Class A stock was exchanged for Chrysler Preferred and Common stock in 1925, it was necessary to allocate the cost of the Maxwell stock to the Chrysler Preferred and Common stock. The taxpayer's computation is as follows:

400 Chrysler Preferred market value 100.....	\$401,000.00
401 Chrysler Common " " 117.....	46,917.00
Total.....	<u>447,917.00</u>

46,917 x \$297,780.87 = Cost of old stock assigned to 401 shares	
447,917 Chrysler Common exchanged in December 1925 for 1,604 shares.....	31,191.08
Deduct cost assigned to 1,604 rights issued in July 1928.....	<u>706.85</u>
Adjusted cost of 1,604 shares.....	30,484.18

The Commissioner insisted upon a different quotation for the market value of the Chrysler Preferred and Common stock in July 1925, to wit, 107 for the Preferred and 119 for the Common. Using these quotations, the cost of the stock is \$28,936.60; or \$1,547.58 less than the cost computed by the taxpayer. The taxpayer secured his quotations from the Financial Chronicle and the daily newspapers and contends that they are correct.

The taxpayer claims, therefore, that if the "First in, first out" rule is applied, the calculation of unit cost of this lot should be made according to his rather than the Commissioner's figures, with a refund of \$193.45, plus \$26.30 interest paid.

(2) The loss of \$79,866.00 reported on the sale of 2,000 shares of General Motors Common stock to the taxpayer's wife on December 29, 1932, was disallowed. The taxpayer contends that this was a bona fide sale at the prevailing market price for full consideration paid out of the purchaser's own assets, that title actually passed, that a bill of sale was executed to which transfer stamps were attached, that the shares were transferred on the books of the corporation, and that the stock was never reacquired by him. The taxpayer claims a refund of \$9,983.25 on this item, plus \$1,357.52 interest paid.

(3) The loss of \$174,811.23 reported on the sale of stock to the Innisfail Corporation on December 29, 1932, was disallowed. The securities sold with the losses sustained are as follows:

The Electric Auto-Lite Company, 500 shares.....	\$10,615.00
Firestone Tire & Rubber Company, 500 shares.....	11,029.00
Gaynor Electric Company, 332 shares.....	46,706.56
Investrad Corporation, 1,553 shares.....	26,743.09
National Baking Company, 18,324 shares.....	70,670.58
National Sugar Refining Company, 800 shares.....	<u>9,047.00</u>
	174,811.23

The taxpayer contends that, although he owned all the stock of Innisfail Corporation, these were bona fide sales at the prevailing market prices for full consideration paid out of the assets of Innisfail Corporation, that title actually passed, that bills of sale were executed to which transfer stamps were attached, that the shares were transferred on the books of the corporations, and that none of the stock was ever reacquired by him. The taxpayer claims a refund of \$21,851.40 on this item, plus \$2,971.35, interest paid.

IV

On November 22, 1928, the taxpayer acquired by purchase 1,900 shares of the common stock of Hudson Motor Car Company at a cost of \$155,135.00. In his income-tax return for 1929, the taxpayer reported a loss of \$48,811.00 on the sale of the aforesaid stock to Innisfail Corporation on December 31, 1929, for \$106,400.00. This loss was disallowed by the Commissioner in a notice of deficiency dated March 11, 1932, to which was annexed a statement explaining that the loss was disallowed "since it does not appear that this was a bona fide sale. On December 6, 1929, you sold to the Innisfail Corporation the above stock. You own the corporation 100 per cent and carry a current account with the corporation on your books. When these transactions were made the account of Innisfail Corporation was debited and investments credited. No cash was given at any time the stocks being carried in your name, all of which clearly indicates that the transactions were nothing more than book entries." The taxpayer petitioned to the Board of Tax Appeals where the matter is now pending. In a notice of deficiency dated March 8, 1933, the Commissioner added to the taxpayer's income for 1930 the dividends of \$6,175.00 paid during that year on the aforesaid Hudson stock, explaining that these were "dividends on stock which are alleged to be owned by the Innisfail Corporation, a corporation which is 100 per cent owned by you. This adjustment is made in accordance with a similar adjustment for the year 1929 which case is still pending."

18 In a notice of deficiency dated March 1, 1934, the Commissioner added to the taxpayer's income for 1931 the dividends of \$2,850.00 paid during that year on the aforesaid Hudson stock.

On August 4, 1932, Innisfail Corporation sold, through a broker, on the New York Stock Exchange, 1,000 of the aforesaid shares of Hudson stock for the sum of \$6,095.00, their fair market value. On August 8, 1932, Innisfail Corporation sold, through a broker, on the New York Stock Exchange, the remaining 900 of the aforesaid shares of Hudson stock for the sum of \$6,273.00, their fair market value.

In view of the Commissioner's contention that no sale of the aforesaid 1,900 shares of Hudson stock took place from the taxpayer to Innisfail Corporation in 1929, that the taxpayer is chargeable with the dividends on the aforesaid stock for the years 1930 and 1931, and that the stock remained the taxpayer's throughout the period, it follows that the taxpayer is entitled to a loss of \$142,767.00 on the sale of the stock in 1932, this amount being the difference between the cost of 1,900 shares to him and the proceeds of the sale in 1932.

The taxpayer, therefore, asserts that the foregoing reduces his net income for the year 1932 by the sum of \$142,767.00, and consequently is ground for a refund of \$17,845.88, and hereby makes claim therefor.

JOS

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instruction 2)

1. Total receipts from business or profession (state kind of business) LAWYER			
Cost of Goods Sold		OTHER BUSINESS DEDUCTIONS	
2. Labor		10. Salaries not included as "Labor" in Line 2. (Do not deduct compensation for your services)	\$ 965 00
3. Material and supplies		11. Interest on business indebtedness to others	
4. Merchandise bought for sale		12. Taxes on business and business property	
5. Other costs (Itemize below or on separate sheet)		13. Losses (explain in table at foot of page)	
6. Plus inventory at beginning of year		14. Bad debts arising from sales or services	
7. TOTAL (Lines 2 to 6)		15. Depreciation, obsolescence, and depletion (explain in table provided at foot of page)	
8. Less inventory at end of year		16. Rent, repairs, and other expenses (itemize below or on separate sheet)	201 25
9. Net Cost of Goods Sold (Line 7 minus Line 8)		17. TOTAL (Lines 10 to 16)	\$ 1,166 25
Enter "C," or "C or M," on Lines 8 and 9 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.		18. TOTAL DEDUCTIONS (Line 9 plus Line 17)	\$ 1,166 25
		19. NET PROFIT (Line 1 minus Line 18) (Enter as Item 2: Loss)	\$ 1,166 25

Explanation of deductions claimed on Lines 8 and 16

Telephone & Telegraph Association dues-sundry office supplies.

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 7)

1. KIND OF PROPERTY	2. AMOUNT RECEIVED	3. COST OR VALUE AS OF MARCH 1, 1913, WHENEVER OWNED	4. DEPRECIATION (Explain in table at foot of page)	5. REPAIRS	6. OTHER EXPENSES (Itemize below)	7. NET PROFIT (Enter as Item 7)
2/64th Interest in 22 Pug Boots.	343 32	12,988 75	907 81			564 49

Explanation of deductions claimed in Column 4

Depreciation of 7% on investment.

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 8)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. AMOUNT RECEIVED	4. COST	5. MARCH 1, 1913, VALUE IF ACQUIRED PRIOR TO THAT DATE	6. COST OF IMPROVEMENTS SUBSEQUENT TO ACQUISITION OR MARCH 1, 1913	7. DEPRECIATION ALLOWED (OR ALLOWABLE) SINCE ACQUISITION OR MARCH 1, 1913	8. NET PROFIT OR LOSS (Enter as Item 8)

State how property was acquired

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 8a)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. DATE SOLD	4. AMOUNT RECEIVED	5. COST	6. MARCH 1, 1913, VALUE IF ACQUIRED PRIOR TO THAT DATE	7. COST OF IMPROVEMENTS SUBSEQUENT TO ACQUISITION OR MARCH 1, 1913	8. DEPRECIATION ALLOWED (OR ALLOWABLE) SINCE ACQUISITION OR MARCH 1, 1913	9. NET GAIN OR LOSS (Enter as Item 9)
	Mo. Day Year	Mo. Day Year						
(SEE SCHEDULE ATTACHED)								

State how property was acquired

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 9)

1. OBLIGATIONS OR SECURITIES	2. AMOUNT OWNED	3. INTEREST RECEIVED OR ACCRUED	4. PRINCIPAL AMOUNT EXEMPT FROM TAXATION	5. AMOUNT OWNED IN EXCESS OF EXEMPTION	6. INTEREST ON AMOUNT IN EXCESS OF EXEMPTION (Enter as Item 6)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia			All	XXXXXX XX	XXXXXX XX
(b) Securities issued under Federal Farm Loan Act, or under such Act as amended, Treasury Bills, and Treasury Certificates of Indebtedness			All	XXXXXX XX	XXXXXX XX
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of U. S. possessions			All	XXXXXX XX	XXXXXX XX
(d) Liberty 4% and 4½% Bonds and Treasury Bonds			25,000		

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. AMOUNT REALIZED	4. COST	5. MARCH 1, 1913, VALUE IF ACQUIRED PRIOR TO THAT DATE	6. COST OF IMPROVEMENTS SUBSEQUENT TO ACQUISITION OR MARCH 1, 1913	7. DEPRECIATION ALLOWED (OR ALLOWABLE) SINCE ACQUISITION OR MARCH 1, 1913	8. NET PROFIT OR LOSS (EXEMPT AS ITEM 8)

State how property was acquired

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSET HELD MORE THAN TWO YEARS (See Instruction 8a)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. DATE SOLD	4. AMOUNT REALIZED	5. COST	6. MARCH 1, 1913, VALUE IF ACQUIRED PRIOR TO THAT DATE	7. COST OF IMPROVEMENTS SUBSEQUENT TO ACQUISITION OR MARCH 1, 1913	8. DEPRECIATION ALLOWED (OR ALLOWABLE) SINCE ACQUISITION OR MARCH 1, 1913	9. NET GAIN OR LOSS (EXEMPT AS ITEM 9)
	Mo. Day Year	Mo. Day Year						

(SEE SCHEDULE ATTACHED)

State how property was acquired

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 9)

1. OBLIGATIONS OR SECURITIES	2. AMOUNT OWNED	3. INTEREST RECEIVED OR ACCRUED	4. PRINCIPAL AMOUNT EXEMPT FROM TAXATION	5. AMOUNT OWNED IN EXCESS OF EXEMPTION	6. INTEREST IN AMOUNT IN EXCESS OF EXEMPTION (EXEMPT AS ITEM 6)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia			All	XXXXXX XX	XXXXXX XX
(b) Securities issued under Federal Farm Loan Act, or under such Act as amended, Treasury Bills, and Treasury Certificates of Indebtedness			All	XXXXXX XX	XXXXXX XX
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of U. S. possessions			All	XXXXXX XX	XXXXXX XX
(d) Liberty 4% and 4½% Bonds and Treasury Bonds			\$5,000		
(e) Treasury Notes			All	XXXXXX XX	XXXXXX XX

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 14, 16, 17, AND 18

Item #14—taxes— Real Estate

New York State Income (1931)

\$7,250.44

\$1.37

Item #17—Contributions

(See schedule attached)

Auto License Fees

108.00

Club Dues & Admissions

274.24

Duty

54.84

Passage Tickets

20.00

Gasoline Tax

50.40

Check Tax

4.46

7,501.78

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. KIND OF PROPERTY (If buildings, state material of which constructed)	2. DATE ACQUIRED	3. AGE WHEN ACQUIRED	4. PROBABLE LIFE AFTER ACQUISITION	5. COST (Exclusive of Land)	6. MARCH 1, 1913, VALUE IF ACQUIRED PRIOR TO THAT DATE (Exclusive of Land)	7. DEPRECIATION ALLOWED (OR ALLOWABLE) IN PRIOR YEARS	8. DEPRECIATION ALLOWABLE THIS YEAR

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 15

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. COST OR VALUE AS OF MARCH 1, 1913, WHEN FIRST OBSERVED	4. SUBSEQUENT IMPROVEMENTS	5. DEPRECIATION ALLOWABLE SINCE ACQUISITION	6. INSURANCE AND SALVAGE VALUE	7. DEDUCTION

DUPLICATE

INDIVIDUAL INCOME TAX RETURN

THIS RETURN SHALL BE FILED ON EACH OF THE LAST DAYS OF APRIL AND OCTOBER NEXT FOLLOWING, RESPECTIVELY, IN EACH OF THE STATES

For Calendar Year 1932

File This Form with the Office of Internal Revenue for Your State on or before March 31, 1933

PRINT NAME AND ADDRESS CLEARLY BELOW

JOHN THOMAS SMITH

1115

FIFTH

AVENUE

NEW YORK

N. Y.

N. Y.

Occupation, Profession, or Profession

LAWYER

DUPLICATE

IF YOU NEED ASSISTANCE
IN PREPARING THIS
RETURN, GO TO A
DISCOUNT COLLECTOR
OR TO THE
COLLECTOR'S OFFICE

DETACH AND RETURN
THIS COPY AND
THE INFORMATION

1. Are you a citizen or resident of the United States? **Yes**
2. If you filed a return for 1931, to which Internal Revenue office was it sent? **Third Dist. N.Y. City**
3. Is this a joint return? **No**
4. State name of husband or wife if a separate return was made and the Internal Revenue office to which it was sent. **MARY A. SMITH Third Dist. N.Y. City**
5. Were you married and living with husband or wife on the last day of your taxable year? **Yes**
6. If you were married and living with husband or wife on the last day of your taxable year, state name of husband or wife and the Internal Revenue office to which a separate return was made and the Internal Revenue office to which it was sent. **None**

7. State whether your books are kept on cash or accrual basis. **Cash**

INCOME		Amount	Exemption
1. Salaries, Wages, Commissions, Fees, etc. (State name and address of employer)			
General Motors Corp. New York, N.Y.		54 500 00	
Argonaut Mining Co. San Francisco, Cal.		2 500 00	
Argonaut Consolidated Mining Co. New York, N.Y.		1 000 00	
2. Income from Business or Profession. (From Schedule A)		1 100 00	
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free government bonds)		7 00 00	
4. Interest on Tax-free Government Bonds Upon Which a Tax was Paid at Source			
5. Income from Partnerships, Syndicates, Pools, etc. (State name and address)			
6. Income from Fiduciaries. (State name and address)			
7. Rents and Royalties. (From Schedule B)		500 00	
8. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)			
9. Taxable Interest on Liberty Bonds, etc. (From Schedule D)			
10. Dividends on: (a) Stock of Domestic Corporations subject to taxation under Title I of 1932 Act		100 000 75	
(b) Stock of Domestic Corporations not subject to taxation under Title I of 1932 Act			
(c) Stock of Foreign Corporations			
11. Other Income. (State nature of income)			
(a) Attorneys Fees		1 000 00	
(b) General Motors Corporation-Bonus Stock		2 000 00	
12. TOTAL INCOME IN ITEMS 1 TO 11		229 027 75	
DEDUCTIONS		Amount	Exemption
13. Interest Paid		20 240 90	
14. Taxes Paid. (Explain in Schedule F)		7 500 75	
15. Losses by Fire, Storm, etc. (Explain in Table at foot of page 2)			
16. Bad Debts. (Explain in Schedule F)			
17. Contributions. (Explain in Schedule F)		1 000 00	
18. Other Deductions Not Reported Above. (Explain in Schedule F)			
19. TOTAL DEDUCTIONS IN ITEMS 13 TO 18		37 118 65	
		191 909 10	

JOSEPH T. HIGGINS VS. JOHN T.

PHOTOPRINT

JOHN THOMAS SMITH

Contributions

- Catholic Charities of the Archdiocese of New York
- Emergency Unemployment Relief Committee
- St. Vincent de Paul Society
- Catholic Boys Brigade
- Catholic Big Brothers
- Catholic Medical Mission Board
- Boys Club of the Archdiocese of New York
- Catholic Institute for the Blind
- Yale University
- Big Brother & Big Sister Federation
- Guild of the Infant Saviour

JOHN T. SMITH

Schedule of Loss on Sale of Sec

- The Electric Auto-Lite Company:
 - Oct. 10, 1930—Bought 500 shs.
 - Dec. 29, 1932—Sold 500 shs.
- Loss
- Fajardo Sugar Co. of Porto Rico:
 - Dec. 30, 1922—Bought 25 shs.
 - Jan. 8, 1923—Bought 50 shs.
 - Jan. 9, 1923—Bought 25 shs.
 - Dec. 1, 1923—Bought 12 shs.

2. Income from Business or Profession. (From Schedule A)	1	156	85
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)		556	64
4. Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source			
5. Income from Partnerships, Syndicates, Pools, etc. (State name and address)			
6. Income from Fiduciaries. (State name and address)			
7. Rents and Royalties. (From Schedule B)		564	47
8. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)			
9. Taxable Interest on Liberty Bonds, etc. (From Schedule E)			
10. Dividends on (a) Stock of Domestic Corporations subject to taxation under Title I of 1933 Act		148	601 74
(b) Stock of Domestic Corporations not subject to taxation under Title I of 1933 Act			
(c) Stock of Foreign Corporations			
11. Other Income. (State nature of income)			
(a) Store Fees		1	049 50
(b) General Motors Corporation-Bonus Stock		2	648 43
12. TOTAL INCOME IN ITEMS 1 TO 11			229 027 73
DEDUCTIONS			
13. Interest Paid		28	849 90
14. Taxes Paid. (Explain in Schedule F)		7	803 73
15. Losses by Fire, Storm, etc. (Explain in Table at foot of page 2)			
16. Bad Debts. (Explain in Schedule F)			
17. Contributions. (Explain in Schedule F)		1	062 00
18. Other Deductions Not Reported Above. (Explain in Schedule F)			
19. TOTAL DEDUCTIONS IN ITEMS 13 TO 18			37 118 63
20. NET INCOME (Item 12 minus Item 19)			191 909 08
21. Less: Net loss for 1931 (Schedule A)			
22. NET INCOME FOR TAX COMPUTATION (Item 20 minus Item 21)			191 909 08

COMPUTATION OF TAX (See Instruction 22)

23. Net Income Subject to Tax (Item 22 above)	191	909	08	24. Normal Tax 6% of Item 23	11	514	00
24. Less: Interest on Liberty Bonds, etc. (Item 3)				25. Normal Tax 6% of Item 24	11	514	50
25. Dividends (Item 10 (a))	148	601	74	26. Normal Tax 6% of Item 25	8	895	43
26. Personal Exemption	2	500	00	27. Tax on Item 25 plus Extension 20	8	895	43
27. Credit for Dependents				28. Tax on Net Income (Sum of Items 24 to 27)	8	820	73
28. Total of Items 24 to 27		148	601 74	29. Adjustment for Capital Gain or Loss (Sum of Item 28)		407	29
29. Balance subject to Normal Tax (Item 23 minus Item 28)		47	407 34	30. Total Tax (Sum of Items 24 to 27)		407	29
30. Amount taxable at 4% (not over \$4,000)		4	000 00	31. Less: Income Tax Paid at Source 6% of Item 23			
31. Amount taxable at 6% (Item 29 minus Item 30)		43	407 34	32. Income Tax Paid to a foreign country or U. S. possession			
32. Amount of Capital Net Gain or Loss (From Schedule D)		518	983 08	33. Balance of Tax (Item 30 minus Item 31)		407	29

TAXPAYER'S RECORD OF PAYMENTS

PAYMENT	AMOUNT	DATE	CHECK OR M. & M.	PAID ON GOVT. OF INCOME
First				
Second				
Third				
Fourth				

An amended return must be marked "Amended" at top of return. Checks and drafts will be accepted only if payable to pay.

EXHIBIT A

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The Electric
Oct. 10,
Dec. 29,

Loss...
Fajardo Sup
Dec. 30,
Jan. 8,
Jan. 9,
Dec. 1,

July 29,
Aug. 21,

Loss...
Firestone T.
Aug. 30,
Dec. 2,
Dec. 29,

Loss...
Gaynor Elec
Jan. 2,
Dec. 29,

Loss...
General Mot
Oct. 28,
Dec. 29,

22 Invest
J.
Dec. 29,

Loss...
National Ba
Mar. 15,
Dec. 29,

Loss...
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PHOTOPRINT

19

20

JOHN THOMAS SMITH

Contributions

	1932
Catholic Charities of the Archdiocese of New York	\$500.00
Emergency Unemployment Relief Committee	250.00
St. Vincent de Paul Society	100.00
Catholic Boys Brigade	40.00
Catholic Big Brothers	50.00
Catholic Medical Mission Board	10.00
Catholic Boys Club of the Archdiocese of New York	20.00
The Catholic Institute for the Blind	10.00
Yale University	50.00
Big Brother & Big Sister Federation	10.00
Guild of the Infant Saviour	25.00
	<u>\$1,065.00</u>

21

DECEMBER 31, 1932.

JOHN T. SMITH

Schedule of Loss on Sale of Securities 1932

The Electric Auto-Lite Company:		
Oct. 10, 1930—Bought 500 shs	\$19,575.00	
Dec. 29, 1932—Sold 500 shs	8,960.00	
Loss		\$10,615.00
Fajardo Sugar Co. of Porto Rico:		
Dec. 30, 1922—Bought 25 shs	2,231.25	
Jan. 8, 1923—Bought 50 shs	4,475.00	
Jan. 9, 1923—Bought 25 shs	2,237.50	
Dec. 1, 1925—Bought 12 shs	1,200.00	
	10,143.75	
July 29, 1932—Sold 100 shs	\$3,526.00	
Aug. 23, 1932—Sold 12 shs	582.12	4,108.12
Loss		6,035.63
Firestone Tire & Rubber Company:		
Aug. 30, 1928; Sept. 10, 1928—Bought 100 shs	17,525.00	
Dec. 2, 1929—Exchanged for 500 shs. New Stock		
Dec. 29, 1932—Sold 500 shs	6,496.00	
Loss		11,029.00
Gaynor Electric Company:		
Jan. 2, 1930—Bought 332 shs	50,000.00	
Dec. 29, 1932—Sold 332 shs	3,293.44	
Loss		46,706.56
General Motors Corporation:		
Oct. 28, 1929—Bought 2,000 shs	104,350.00	
Dec. 29, 1932—Sold 2,000 shs	24,484.00	
Loss		79,866.00
Investrad Corporation:		
Jan. 2, 1930, to Oct. 8, 1930—Bought 1,553 shs	33,498.65	
Dec. 29, 1932—Sold 1,553 shs	6,755.56	
Loss		26,743.09
National Baking Company:		
Mar. 15, 1926, to Dec. 16, 1930—Bought 18,324 shs	87,528.66	
Dec. 29, 1932—Sold 18,324 shs	16,858.08	
Loss		76,670.58

National Sugar Refining Company:

Nov. 1, 1926—Bought 200 shs.	\$25,875.00
Nov. 26, 1928—Exchanged for 800 shs. New Stock.	
Dec. 29, 1932—Sold 800 shs.	16,828.00

Loss

\$9,047.00

Chrysler Corporation:

Nov. 2, 1932—Sold 100 shs.	1,379.50
Nov. 4, 1932—Sold 2,000 shs.	40,005.50
Nov. 5, 1932—Sold 2,000 shs.	27,715.00
Dec. 12, 1932—Sold 2,000 shs.	33,742.00
Dec. 27, 1932—Sold 2,000 shs.	30,742.00
Dec. 28, 1932—Sold 3,400 shs.	53,461.40
Dec. 29, 1932—Sold 1,100 shs.	17,458.10

204,503.50

Cost (See Schedule attached)

460,881.98

Loss

256,378.48

Total

517,001.34

Deduct—Proceeds of sale of 12 shs. General Electric Special Stock received as stock div., 1922-1923.

125.38

516,875.96

23 Analysis of Cost of Chrysler Corporation Stock Sold 1932
(13,500 shs.)

Lot #1—1,011 shs.:

July 14, 1925—Purchased 1,900 shs. Maxwell "B" \$209,975.00

Dec. 1925—Exchanged for 7,600 shs. Chrysler Corporation.

July 29, 1928—Received Rights to subscribe to new stock on basis of one new sh. for six old shares.

July 20, 1928—Market Values:

7,600 shs. Chrysler Corp. (74) 562,400.00

7,600 shs. Rights (\$2.75) 20,900.00

Total

583,300.00

Cost assigned to Rights:

20,900

583,300 × 209,975.00 7,523.53

Purchase of 2 Rights @ \$2.75 5.50

Subscription to 1,267 shs. New Stock @ \$57.50 72,852.50

Cost of 1,267 shs. New Stock 80,381.53

Deduct—Cost of 256 shs. sold in 1931 16,243.20

Balance—Cost of 1,011 shs.

\$64,138.33

Lot #2—268 shs.:

1924 & 1925—Purchased 4,010 shs. Maxwell "A" 297,780.87

July 1925—Exchanged above stock for—

4,010 shs. Chrysler Pfd. Mkt. value (100) 401,000.00

401 shs. Chrysler Com. Mkt. value (117) 46,917.00

Total

447,917.00

New Cost assigned to 401 shares Chrysler Common:

46,917

447,917 × 2 1,780.87 31,191.03

447,917

24 Dec. 1925—Exchanged above stock for 1,004
shs. New Chrysler Common Stock.

July 20, 1928—Received rights to subscribe to
new stock on basis of one new share for six old
shares.

July 20, 1928—Market Values:

1,004 shs. Chrysler Corp. (74)	\$118,696.00
1,004 shs. Rights (\$2.75)	4,411.00

Total	123,107.00
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Cost assigned to Rights:

4,411.00

× 31,191.03	1,117.60
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123,107.00

Purchase of 4 Rights @ \$2.75	11.00
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Subscription to 268 shs. New Stock @ \$57.50	15,410.00
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Cost of 268 shares	\$16,538.60
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Lot #3—1,000 shares:

Oct. 1929, Purchase of 1,000 shs. @ 44 (Com. \$150.)	44,150.00
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Lot #4—4,412 Shares:

Dec. 1929—Purchase of 4,412 shs. @ 33	145,596.00
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Lot #5—2,772 Shares:

Received through reversion of principal of trust
fund created for benefit of J. Vincent Smith
and Bernard J. Smith.

May 10, 1926—Above beneficiaries received in
exchange for 524 shares Chrysler Corporation
Preferred Stock:

2,772 Shs. Chrysler Common Stock at market value of \$31.00 per share	85,932.00
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25 July 20, 1928—Received rights to subscribe to
new stock on basis of one new share for six
old shares.

July 20, 1928—Market Values:

2,772 shs. Chrysler Corp. (74)	205,128.00
2,772 shs. Rights (\$2.75)	7,623.00

Total	212,751.00
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Cost assigned to 2,772 shs.:

205,128.

× 85,932.00	82,853.00
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212,751.

Lot # 6—4,037 Shares:

See Lot # 1—Cost of 7,600 shares	209,975.00
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Less—Cost assigned to 7,600 Rights 7/20/28	7,523.53
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Adjusted Cost of 7,600 Shares	202,451.47
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Deduct—Cost of 3,400 Shares sold 1931	90,627.00
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Balance—Cost of 4,200 Shares (26.65 per sh.)	111,824.47
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Cost of 4,037 Shares @ 26.65	107,606.05
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Total Cost 13,500 Shares	400,881.98
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Exhibit B, annexed to complaint

Record of Chrysler Certificate Numbers Delivered Against
1932 Sales

Certificate Numbers		No. Shares	Allocation of shares to Lot Numbers and Unit Cost					
No Par	\$5 Par		#1 62.32	#2 60.92	#3 44.09	#4 33.00	#5 30.10	#6 26.82
116069/116080		1,200	1,011	189				
116015/116022		800				800		
116059/116058		2,000				2,000		
19605/19604		1,000			1,000			
116059/116068	141377/141386	1,000				1,000		
116023/116028	142083/142088	600				600		
32297/32300	142089/142092	400					400	
8506		2						
3422		2						
69243	(1) 207913 (77 shs.)	53		53				
166310		29		29				
31145	141387	100						
32282	(2) 141388	100		6		12	60	
32301/32317	142083/142099	1,700					1,700	
32318	142110	100					100	
31146	142114	100					100	
32319/32321	142111/142113	300					300	
35822	(3) 142115	100					12	
27933/27948	(4) 142116/142131	1,600						1,537
32220/32223	142138/142141	400						400
32322/32331	142142/142151	1,000						1,000
32214/32219	142132/142137	600						600
32332/32333	142152/142153	200						200
31145/31143	142154/142156	300						300
		13,677	1,011	268	1,000	4,412	2,772	4,437

Less Odd Lot Certificates Received:

(1) 2144558—4 shs	
(2) 214557—22 shs	
(3) 214670—88 shs	
(4) 21467—63 shs	477
Balance Sold	13,500

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Recapitulation of Cost of Lots Sold

Lot #1—1,011 @ \$62.32	\$63,008.21
" #2—268 @ 60.92	16,327.85
" #3—1,000 @ 44.09	44,150.00
" #4—4,412 @ 33.00	145,596.00
" #5—2,772 @ 30.10	83,433.61
" #6—4,037 @ 26.82	108,292.31
13,500	\$400,817.98
Cost computed by the Commissioner	438,900.16
Difference	\$21,907.88

(Signed) JOHN T. SMITH.

Sworn to and subscribed before me this 14th day of April 1936.

[SEAL]

WILLARD DOTY,

Notary Public, New York County.

County Clerk's No. 175, Reg. No. 7-D-50.

Commission Expires, March 30, 1937.

In United States District Court

[Title omitted.]

Answer

The defendant by his attorney Lamar Hardy, United States Attorney for the Southern District of New York, for his answer to the complaint respectfully alleges:

I. Denies knowledge or information sufficient to form a belief as to the allegations in the paragraph "First."

II. Admits that on or about March 15, 1933, the plaintiff filed with the Collector of Internal Revenue for the Third District of New York his individual income tax return for 1932, as alleged in the paragraph "Third;" but denies each and every other allegation therein.

III. Denies each and every allegation of the paragraph "Fourth," except as hereinafter admitted, and alleges that: On or about March 11, 1935, the United States Commissioner of Internal Revenue duly notified the plaintiff by mail of a determination of his additional

income tax liability for the year 1932 of a deficiency of \$52,784.16, including tax and penalty, and advising the plaintiff of his statutory right to file a petition with the United States Board of Tax Appeals for the redetermination of said deficiency within 90 days from the date of the mailing of that letter. On June 21, 1935, the Commissioner of Internal Revenue duly made an assessment against the plaintiff of \$35,189.44 as additional income tax for 1932, \$17,594.72 as a 50% penalty thereon, and \$4,785.28 due as interest thereon, or a total of \$57,569.44.

IV. Admits that on July 3, 1935, the plaintiff paid the defendant the sum of \$57,569.44 in satisfaction of the aforesaid assessment as alleged in paragraph "Fifth," but denies each and every other allegation therein.

V. Denies that the plaintiff sold and delivered 2,000 shares of General Motor Corporation stock to Mary A. Smith, his wife for the sum of \$21,500 as alleged, in the paragraph "Tenth" of the Complaint, and the defendant denies knowledge or information sufficient to form a belief as to the other allegations contained therein.

VI. Admits that in the plaintiff's income tax return for 1932, he reported a loss of \$79,866, declared to have been sustained on the alleged sale of 2,000 shares of General Motors Corporation common stock which loss was disallowed as a deduction by the Commissioner of Internal Revenue and is part of the basis for the deficiency determined by the Commissioner and paid by the plaintiff on July 3, 1935, as alleged in paragraph "Eleventh," but denies each and every other allegation contained therein.

VII. Denies each and every allegation of paragraph "Twelfth."

VIII. Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph "Thirteenth."

IX. Denies each and every allegation in the paragraph "Fourteenth."

X. Admits that the Innisfail Corporation was organized under the laws of the State of New Jersey in 1926 and the plaintiff became the owner of all of its capital stock as alleged in the paragraph "Fifteenth" of the complaint, but the defendant denies knowledge or information sufficient to form a belief as to the other allegations contained therein.

XI. Admits that in the plaintiff's income tax return for 1932 he reported a loss of \$174,811.23 declared to have been sustained on the alleged sale of the securities described in the paragraphs "Thirteenth," "Fourteenth," and "Fifteenth," of the Complaint, which loss was disallowed as a deduction by the Commissioner of Internal Revenue and is part of the basis for the deficiency determined by the Commissioner and paid by the plaintiff on July 3, 1935, as alleged in the paragraph "Sixteenth" of the Complaint, but denies each and every other allegation therein.

XII. Denies each and every allegation in the paragraph "Seventeenth."

XIII. Denies knowledge or information sufficient to form a belief as to the allegation in paragraph "Eighteenth" that on November 22, 1928, the plaintiff purchased 1,900 shares of common stock of Hudson Motor Car Company at a cost of \$115,135.00.

XIV. Denies knowledge or information sufficient to form a belief as to the allegations in paragraph "Nineteenth."

31 XV. Admits that in the plaintiff's 1932 individual income-tax return he did not claim any loss on the alleged sale of the Hudson Motor Car Company stock, described in paragraphs "Eighteenth" and "Nineteenth" of the Complaint, as alleged in paragraph "Twentieth" of the Complaint, but denies each and every other allegation therein.

XVI. Denies each and every allegation in paragraph "Twenty-first."

XVII. Denies each and every allegation in paragraph "Twenty-second."

XVIII. Denies each and every allegation in paragraph "Twenty-third."

Wherefore, defendant prays that the petition be dismissed and for his costs and disbursements herein.

LAMAR HARDY,

*United States Attorney, Southern District of New York,
Attorney for Defendant. Office & P. O. Address: U. S.
Court House, Foley Square, Borough of Manhattan, City
of New York.*

[Duly sworn to by Joseph T. Higgins; jurat omitted in printing.]

In United States District Court for the Southern District of New York

L 66-54

JOHN THOMAS SMITH, PLAINTIFF

vs.

JOSEPH T. HIGGINS, COLLECTOR OF INTERNAL REVENUE FOR THE THIRD DISTRICT OF NEW YORK, DEFENDANT

Judgment

The issues in the above-entitled action having duly come on for trial before the Hon. Mortimer W. Byers and a jury at a Trial Term of this Court held on the 23rd, 24th, 25th, 28th, and 29th days of March 1938, at Room 618 United States Court House, Foley Square, in the County of New York, and the issues having been duly tried and the jury having returned a verdict in favor of plaintiff and against the defendant on the issue of the penalty assessed in the sum of \$17,594.72 in connection with plaintiff's 1932 Income Tax and on the issue of the deficiency assessed in the sum of \$11,340.77 with respect to the loss plaintiff claimed to have sustained from the sale of certain General Motors Common Stock to Mary A. Smith, and in favor of defendant and against plaintiff on the issue of the deficiency assessed in the sum of \$24,822.75 with respect to the loss plaintiff claimed to have sustained from the sale of certain sundry stockholdings to Innisfail Corporation, and the amount due plaintiff in accordance with said verdict being in the sum of \$28,935.49, together with interest according to law, plus costs and disbursements of this action as taxed, and the costs and disbursements of plaintiff having been taxed at \$34.50, it is

Adjudged, that the plaintiff, John Thomas Smith, do recover of the defendant, Joseph T. Higgins, Collector of Internal Revenue for the Third District of New York, the sum of \$28,935.49, together with interest according to law and \$34.50 costs and disbursements, as taxed, and that said plaintiff, John Thomas Smith, have execution therefor.

CHARLES WEISER,
Clerk, U. S. District Court,
Southern District of N. Y.

Judgment entered May 10, 1938.

L. 66—53

MARY A. SMITH, PLAINTIFF

vs.

JOSEPH T. HIGGINS, COLLECTOR OF INTERNAL REVENUE FOR THE THIRD DISTRICT OF NEW YORK, DEFENDANT

L. 66—54

JOHN THOMAS SMITH, PLAINTIFF

vs.

JOSEPH T. HIGGINS, COLLECTOR OF INTERNAL REVENUE FOR THE THIRD DISTRICT OF NEW YORK, DEFENDANT

Bill of exceptions

Before Hon. MORTIMER W. BYERS, D. J., and a Jury.

NEW YORK, March 23, 1938:
10:30 o'clock, A. M.

Appearances: David Sher, Esq., Attorney for the Plaintiffs.
 Lamar Hardy, Esq., United States Attorney, for the Defendant.
 Robert E. Pratt, Esq., Asst. U. S. Attorney, and Arthur L. Jacobs,
 Esq., Special Assistant to the Attorney General, of Counsel.

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(A jury was duly impaneled and sworn.)

(Mr. Sher opened to the jury on behalf of the plaintiffs.)

(Mr. Pratt opened to the jury on behalf of the defendant.)

JOHN T. SMITH, one of the plaintiffs, called as a witness on behalf of the plaintiffs, being duly sworn; testified as follows:

Direct examination by Mr. SHER:

Q. Will you state your name and address?—A. John T. Smith. Legal address is Southampton, Long Island, and my house in town is 19 East 72nd Street.

Q. What is your occupation, Mr. Smith?—A. I am a lawyer.

Q. Are you the plaintiff in this action?—A. Yes, sir.

Q. I hand you a certified copy of the income tax return for the calendar year 1932 of John Thomas Smith, and ask whether that is your signature subscribed at the bottom [handing]?—A. Yes, sir.

Mr. SHER. The plaintiff offers in evidence the income tax return of John Thomas Smith for the year 1932.

(Marked "Plaintiff's Exhibit No. 1.")

Mr. SHER. Ladies and gentlemen of the jury, this is the income tax return of John Thomas Smith for the calendar year 1932 in evidence in this case [handing to jury].

Q. Mr. Smith, I hand you a letter signed by the Commissioner of Internal Revenue, and ask you whether or not you received that letter [handing]?—A. I did.

37 Mr. SHER. Plaintiff offers in evidence a letter, dated March 11, 1935, addressed to Mr. John Thomas Smith from the Commissioner of Internal Revenue.

Mr. PRATT. No objection.

(Marked "Plaintiff's Exhibit No. 2.")

38 Mr. SHER. Plaintiff offers in evidence certified copy of the certificate of incorporation of Innisfail Corporation.

Mr. PRATT. No objection.

(Marked "Plaintiff's Exhibit No. 10.")

The COURT. What is the date of it, please?

Mr. SHER. June 10, 1928, certificate of incorporation of the Innisfail Corporation.

Q. Mr. Smith, I hand you five documents each entitled "Memorandum of Sale," and each dated December 29, 1932, and ask you whether you recognize the signature on each of these documents?—A. I do.

Q. And whose signatures appear on these documents?—A. Well, my signature appears on the document and the signature of Mr. Hogan, secretary of the Innisfail Corporation appears on each of the documents.

Q. Do you remember what you did with these documents after you signed them?—A. I think I handed them over to Mr. Doty and told him to put them in the files for purposes of keeping a record.

33 Q. Was Mr. Doty an officer of the Innisfail Corporation?—

A. Yes; he was an officer, I think, of the Innisfail Corporation and he also preserved my records.

Mr. SHER. Plaintiff offers in evidence memorandum of sale dated December 29, 1932.

Mr. PRATT. My objection is the same, if your Honor please.

Mr. SHER. I offer in evidence a list of memoranda of sale.

Mr. PRATT. My objection is the same, if your Honor please. They are self-serving. The issue in the case—

The COURT. Your "they are self-serving" part does not interest me very much. The question is the custody of these papers. If you are satisfied on that, well and good. If you are not—

Mr. PRATT. I am not satisfied on the custody. The status of the corporation is, while not collaterally in issue is indirectly in issue, and if these things were supposed to have come from Mr. Doty, who is secretary of the corporation, I think we ought to have them introduced through Mr. Doty, in order to see what sort of a routine these documents would go through, where they were filed, in whose office, when they were received; and so on.

Mr. SHER. If your Honor pleases, Mr. Smith testified that he gave the bills of sale to Mr. Doty, an officer of the Innisfail Corporation, as soon as he signed them. I should think that that is sufficient. Re-

gardless of what the Innisfail Corporation may be, according to the memorandum of sale, they were not in a vacuum, they were with a man who was an officer of that corporation.

Mr. PRATT. We do not know what Mr. Doty did with them, whether he filed them, or—

54 Mr. SHER. I think it is enough that Mr. Smith delivered them.

The COURT. Please, please. You got off on the wrong foot when you said the status of the corporation is in question. That has nothing to do with the admissibility of these documents at all. If that is the basis of your objection, you ought to abandon it, because it has no bearing on the admissibility of these documents, as I said, at all. There is the mere question of custody. Now, if I understand the Government's position from its brief, the sooner we get down to the real facts the better.

You have a technical objection on the custody of these documents and if you wish to urge it and if you wish to stand on it, I will sustain the objection, but if you are satisfied as to the authenticity of the documents, then make your objection and I will rule on it. What is your attitude?

Mr. PRATT. I urge the objection on the technical grounds.

The COURT. Very good. Mark them for identification.

(Marked "Plaintiffs' Exhibit No. 11 for Identification.")

Mr. SHER. Exception, if your Honor pleases.

The COURT. You understand that all that is in my mind is the whereabouts of these papers from 1930 to the present time. That is all that has to be accounted for, and when that is accounted for the offer may be renewed.

Q. Mr. Smith, I hand you five certificates for 100 shares each of the Electric Auto Lite Company. I will ask you to examine these
55 certificates and state whether or not your signature is endorsed to the back of each [handing]?—A. It is.

Q. What did you do with these certificates after you endorsed them?—A. I put them in transfer.

Q. What did you do?—A. Well, I think I told—I turned the certificates over with directions to have new certificates issued, from the transfer agent of the Electric Auto Lite Company, in the name of either the Innisfail Corporation or its nominee; I don't recall which.

Mr. SHER. Plaintiff offers in evidence five stock certificates of Electric Auto Lite Company.

Mr. PRATT. I have no objection to the certificates going in, but I renew my previous objection on the sole feature of some of this written evidence, because attached to these certificates is a communication signed by John Thomas Smith, and it says: "This is to certify that the transfer of the within shares, certificate numbers, etc., represents a sale in which the selling price is less than \$20 per share." I renew my objection.

Mr. SHER. As for stamp tax purposes, I will be glad to withdraw that paper if that is the cause of any objection.

The COURT. You have heard what has been said?

Mr. PRATT. Sir?

The COURT. You have heard what has been said?

Mr. SHER. Well, I will offer the certificates except for this paper.

Mr. PRATT. No objection.

The COURT. All right. What are the numbers?

Mr. SHER. NC 20565 to 60.

(Marked "Plaintiffs' Exhibit No. 12.")

Mr. SHER. Five stock certificates, 100 shares each of the Electric Auto Lite Company, certifies that John T. Smith is the owner of 100 shares of Electric Auto Lite Company, and on the back, for value received hereby sell, assign, and transfer unto Innisfail Corporation, 15 Exchange Place, Jersey City, New Jersey, shares of the capital stock represented by the within certificates. John T. Smith. The same is on each of these certificates.

Q. Mr. Smith, I hand you five stock certificates of Firestone Tire & Rubber Company and ask you to examine the back of each and state whether or not your signature is endorsed on it [handing]?—

A. It is.

Q. What did you do with these certificates after you endorsed them?—A. I turned them in for transfer into the name of the new owner, the Innisfail Corporation, or its nominee.

Mr. SHER. Plaintiff offers in evidence five stock certificates, No. NYC 1126 to 1130, Firestone Tire & Rubber Company.

The COURT. How many shares each?

Mr. SHER. 100 shares each, your Honor.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit No. 13.")

Mr. SHER. May it please the Court, the transfer agent requests that he receive back these original certificates and I, therefore, ask leave to substitute photostatic copies in their place. I think counsel has no objection to that. Do you have any objection if I pass the originals around to the jury?

Mr. PRATT. Not all all.

Mr. SHER. We will put the photostats in evidence. Firestone Tire & Rubber Company, five certificates for 100 shares endorsed for value received hereby sell, assign, and transfer unto Innisfail Corporation, 15 Exchange Place, Jersey City, New Jersey, shares of the stock represented by the within certificate, etc., John T. Smith.

Q. Mr. Smith, I hand you two certificates of Gaynor Electric Company, No. 4 and No. 6, one for 165 shares and one for 166 shares, with stock powers attached to each. I will ask you to examine the certificates and the stock powers and state whether or not your signature is endorsed to the stock powers [handing]?—A. It is.

Q. What did you do with these certificates after you endorsed them?—A. I followed the same procedure on them.

Mr. SHER. Plaintiff offers in evidence two certificates of Gaynor Electric Company, Inc., No. 4 and No. 6 with stock powers attached.

Mr. PRATT. No objections.

(Marked "Plaintiffs' Exhibit No. 14.")

Mr. SHER. Gaynor Electric Company, Inc. This is to certify that John T. Smith is the owner of 165 shares of the capital stock of Gaynor Electric Company, and the other certificate, one for 166 shares of stock, stock powers attached to each, for value received do bargain, sell, assign, and transfer and by these presents do bargain, sell, assign, and transfer to Innisfail Corporation, 15 Exchange Place, Jersey City, 165 shares of capital stock of Gaynor Electric Company, Inc., standing in my name, signed John T. Smith.

58 Q. Mr. Smith, I call your attention to the fact that there are here certificates for 165 and 166 shares of Gaynor Electric stock, making a total of 331 shares, whereas the complaint alleges that 332 shares were sold to Gaynor Electric Company. Can you explain what happened to that other share?—A. Well, I can't. If you will let me look at it I may be able to tell.

Q. I show you a stock certificate in the name of Henry M. Hogan for 1 share with stock power attached and ask whether or not that refreshes your recollection about it.—A. This is the one that Mr. Hogan—he was my nominee in respect to this share. In other words, he held this stock for my—for my convenience and he was the one, therefore, when it came to the transfer, who executed the power because he was the record holder.

Q. And what did you do with that certificate?—A. Put that through in the same manner for transfer in order to give the title to the certificates to the purchaser in this case, the Innisfail Corporation.

Mr. SHER. Plaintiff offers in evidence certificate No. 5 of Gaynor Electric Company, Inc., for 1 share of stock.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit No. 15.")

Mr. SHER. Certificate for 1 share of Gaynor Electric Company, Inc. This is to certify that Henry M. Hogan is the owner of one share of the capital stock of Gaynor Electric Company Inc. Know all men by these presents that for value received have bargained, sold, assigned, and transferred unto Innisfail Corporation, 1 share of the common capital stock of the Gaynor Electric Company.

Signed Henry Hogan.

59 Q. Mr. Smith, I hand you a certificate for 2,109 shares of Investrad Corporation stock [handing].—A. Yes.

Q. I will ask you to examine that and state whether or not your signature is endorsed on the back?—A. It is.

Q. And what did you do with that certificate after you endorsed it?—A. Well, we had this one split up. 1,553 shares went to the Innisfail Corporation and the balance of 556 shares was reissued to me.

Q. In other words, how many shares did you sell to the Innisfail Corporation?—A. 1,553 shares.

Q. And for how many shares was that certificate?—A. This certificate was for 2,109. I turned the certificate for 2,109 in and got back the certificate in my own name for 556 shares, and Innisfail got certificates for 1,553 shares.

Mr. SHER. Plaintiff offers in evidence certificate No. 5407 of Investrad Corporation for 2,109 shares.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit No. 16.")

Mr. SHER. Stock certificate of Investrad Corporation. This is to certify that John T. Smith is the owner of 2,109 shares of stock of the Investrad Corporation. On the back, for value received, hereby sell, assign, and transfer unto Innisfail Corporation, John T. Smith, 1775 Broadway, New York City, 1,553 shares, John T. Smith, 1775 Broadway, New York City, 556 shares, signed John T. Smith.

Q. Mr. Smith, I hand you a certificate of the National Baking Company for 19,934 shares, and ask you to examine the back and state whether or not your signature is endorsed thereon [handing]?—

A. It is.

60 Q. What did you do with that certificate after you endorsed it?—A. That was turned in for transfer to be split 18,324 shares to come out in the name of Innisfail Corporation and 1,610 shares to come out in my name. In other words, I was selling Innisfail Corporation 18,324 shares, and the endorsement was to carry out that purpose in that amount.

Mr. SHER. Plaintiff offers in evidence certificate No. 55 of the National Baking Company for 19,934 shares.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit No. 17.")

The COURT. What is the number of that certificate?

Mr. SHER. No. 55. National Baking Company. This is to certify that John T. Smith is the owner of 19,934 fully paid and non-assessable shares of National Baking Company; for value received hereby sell, assign, and transfer unto Innisfail Corporation 18,324 shares, and to John T. Smith, 1775 Broadway, New York, 1,610 shares of stock represented by the within certificate, signed John T. Smith.

Q. Mr. Smith, I hand you a certificate of the National Sugar Refining Company of New Jersey, and ask you to examine it and state whether your signature is endorsed to the back [handing]?—

A. It is.

Q. And what did you do with that certificate after you endorsed it?—A. Well, we turned that in for transfer to be in the name of Innisfail Corporation.

Mr. SHER. Plaintiff offers in evidence certificate No. T1969 for 800 shares of the National Sugar Refining Company of New Jersey.

Mr. PRATT. No objection.

61 (Marked "Plaintiffs' Exhibit No. 18.")

Mr. SHER. National Sugar Refining Company of New Jersey. This is to certify that John T. Smith is the owner of 800 fully

paid and non-assessable shares of the National Sugar Refining Company of New Jersey; for value received hereby sell, assign, and transfer unto Innisfail Corporation, 15 Exchange Place, Jersey City, New Jersey, shares of the capital stock represented by the within certificate, John T. Smith.

And I ask leave to substitute a photostatic copy for that certificate.

Mr. PRATT. All right.

Q. Mr. Smith, what was your intention in endorsing these certificates for transfer to the Innisfail Corporation?—A. To transfer title out of me into Innisfail Corporation.

Q. What interest, if any, did you intend to retain in the securities?—A. None.

Q. Did you ever get any of the securities back from Innisfail Corporation?—A. No.

Q. Did you ever give the purchase price back to Innisfail Corporation?—A. No.

Q. Did you ever get any of the dividends on any of these securities?—A. Absolutely not.

Q. What control, if any, have you exerted over these securities?—A. I exerted no control, other than that I was an officer of the Innisfail Corporation up until the time when I sold my interest in the Innisfail Corporation.

Q. Was there any agreement between you and Innisfail Corporation respecting these securities except the agreement about which you have testified?—A. That is all.

Q. Were you paid by Innisfail Corporation for those securities?—A. Oh, yes.

Q. I hand you a transcript of the account of the Innisfail Corporation on the books of John Thomas Smith and ask you to testify how payment was effected.

Mr. PRATT. I object, if your Honor please, to even a characterization of that document. Let there be a recognition of it by the witness, and let that appear in the record instead of it being described in full, as counsel has just described.

The COURT. Ask the witness what this paper is that you showed him.

Q. Mr. Smith, will you state?—A. Well, this is a copy of my ledger showing the transactions of 1932 between me and the Innisfail Corporation, the debits and the credits.

Q. Does that refresh your recollection about the mode in which payment was effected for those transactions?—A. Yes. This gives the details.

Q. Will you testify how payment was made, if at all, by whom and so on?—A. Payment was made by the delivery—

Mr. PRATT. Just a minute, Mr. Smith, please.

The WITNESS. Surely.

Mr. PRATT. The witness has not stated that he had no recollection of the manner of payment for the year 1932.

The COURT. Can you testify of your own memory without refreshing it concerning these items of payment?

The WITNESS. Not in detail, no; and not with exactitude. I can testify, for example, that the cash was approximately \$7,000, and the securities were the balance, but the details are set forth in the books right down to the last penny, and the cash payment is apparently or doubtless covered by check, but as to the amounts more exactly than that I would not want to state without refreshing my recollection.

The COURT. All right. Proceed.

Mr. PRATT. If your Honor please, it has not been established that this gentleman prepared the transcript. Can't he refresh his recollection from the books themselves?

The COURT. That is just a matter of convenience. You may ask the witness whether he knows if this is a correct transcript or not.

Mr. SHER. If your Honor please, the purpose of a paper is to refresh the witness's recollection—

The COURT. Just a moment. I am telling the Government's attorney what he may wish to do. Do you wish to ask the witness if that is a correct transcript of the book?

Mr. PRATT. Yes.

By Mr. PRATT:

Q. Is that a correct transcript of the book?—A. I have every reason to believe it is.

Q. You don't know, do you?—A. I did not keep the books. I did not make the transcript, but despite the fact there were two omissions, I have every reason to believe that this is a correct transcript. These figures on both sides are correct.

Q. Was that transcript made, that paper from which you are reading, at the time that the accounts were prepared?—A. Oh, no.

Mr. SHER. I object to that as immaterial and irrelevant for the purpose of establishing the propriety of a document to refresh the witness's recollection. We are not introducing the document.

Mr. PRATT. May I be heard on that, if your Honor please?

The COURT. No; I do not want to hear any more from either of you. Just ask questions, please. I will rule on objections. I do not want to hear any more speeches. Ask your questions.

By Mr. PRATT:

Q. You don't know, do you, Mr. Smith, whether or not that paper you hold before you was made from the books at the time the entries in question were passed upon?

The COURT. It does not have to be made at the time—

Mr. SHER. I object to that.

The COURT. My friend, the question is whether or not it is accurate. That is all. It could have been made this morning and if it was accurate, that is what you are entitled to know, and not when it was made. Do you know whether it is accurate?

The WITNESS. I have every reason to believe that it is. That is the basis on which we make our tax returns and swore to it in our tax returns, and we make it on the same basis.

The COURT. Can you testify from your memory as refreshed concerning these transactions by looking at that paper?

The WITNESS. I think I can.

The COURT. Very good. Then I will permit you to.

By Mr. SHER:

Q. Will you proceed, Mr. Smith?—A. On the 29th day of December 1932, against the delivery of 18,324 shares of National Baking stock, the amount that I was credited with and the Innisfail Corporation debited with was \$18,324. On the same date in respect to 332 shares of Gaynor Electric Company, the amount was \$3,320. On the same day in respect of 1,553 shares of Investrad Corporation the amount was \$6,879.80. In respect of 500 shares of Firestone Tire the amount was \$6,500, and in respect to 500 shares of Electric Auto Lite it was \$9,000, and with regard to 800 shares of National Sugar the amount was \$16,900.

Then in addition to that I delivered on that day to the Innisfail Corporation my check of \$7,440.88 in order to wipe out the balance, and when these transactions were complete at the end of 1932 we were quits. The Innisfail Corporation owed me nothing and I owed the Innisfail Corporation nothing.

Q. Did you testify that the Innisfail Corporation owed you some money prior to the sale of these securities?—A. Oh, yes.

Q. Can you state the amount?—A. Well, the amount would be the difference between—I have to figure that. The amount was \$68,364.68—no, no, that is not it. We started out that year with my owing them \$41,477—

The COURT. Just a moment. We will take a recess until two o'clock. In the meantime the accurate information will be acquired. Members of the jury: do not let any person whomsoever communicate with you directly or indirectly about this case; do not discuss it among yourselves or try to decide it until it is submitted. We will resume at two o'clock.

(Recess until 2:00 P. M.)

JOHN T. SMITH, resumed the stand:

Direct examination by Mr. SHER (continued):

Q. Mr. Smith, at the noon recess you were testifying about the manner in which you settled for the purchase price of these securities with Innisfail Corporation.—A. Yes, sir.

Q. Will you describe how that was done?—A. Well, you gave me, as I recollect it, that transcript of the record on which I calculated that I owed them \$68,364.68, which I settled by the delivery and sale of these stocks referred to and the cash payment of \$7,440.88.

Q. I hand you a check dated December 29, 1932, and ask whether your signature is subscribed to that check. [handing]?—A. It is.

Mr. SHER. Plaintiff offers in evidence a check dated December 29, 1932, to Innisfail Corporation from J. T. Smith in the amount of \$7,440.88.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit No. 19" and read to the jury.)

Q. Mr. Smith, I hand you this book and ask you whether or not this is the minute book of Innisfail Corporation [handing]?—

A. It is.

Mr. SHER. Plaintiff offers in evidence the minute book of Innisfail Corporation.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit No. 20.")

Mr. SHER. The minute book of Innisfail Corporation reads: Innisfail Corporation, minutes of meeting of board of directors. At a special meeting of the board of directors of the Innisfail Corporation held at No. 1775 Broadway, Borough of Manhattan, City, County, and State of New York, on the 21st day of April 1933, at two o'clock in the afternoon, the following proceedings were had:

There were present John T. Smith, Anthony J. Russo, Henry M. Hogan, being all members of the board. Mr. Smith presided and Mr. Hogan recorded.

The chairman presented to the meeting the minutes of the annual meeting of the stockholders held on April 19, 1933. The chairman then stated that it was necessary to elect officers for the ensuing year.

Upon motion duly made and seconded the following were unanimously elected officers for the ensuing year:

President, John T. Smith; vice-president, Anthony J. Russo; secretary and treasurer, Henry M. Hogan; assistant secretary and assistant treasurer, Willard Doty.

The chairman presented to the meeting a financial statement of the company as of December 31, 1932, which was unanimously approved. The chairman reported that during the year 1932 the corporation had purchased 18,324 shares of National Baking Company for \$18,324; 332 shares of Gaynor Electric Company, Inc., \$3,320; 1,553 shares of Investrad Corporation, \$6,879.80; 500 shares of Firestone Tire & Rubber Company for \$6,500; 500 shares Electric Auto Lite Company for \$9,000; 800 shares National Sugar Refining Company for \$16,900, and that the corporation had sold 200 shares of Gimbel Bros. Inc. for \$369, and 1,900 shares of Hudson Motor Car Company for \$12,368, which transactions upon motion duly made and seconded were unanimously approved.

The chairman then presented a syndicate agreement between R. S. Young and Frank L. Kolbe, doing business under the name of Young,

Kolbe Company as syndicate managers in connection with the organization of a syndicate to trade in stocks and bonds of Pathe Exchange, Inc., United States Government Bonds and notes of General Motors Acceptance Corporation, and stated that the corporation had entered into said syndicate-agreement in an amount

not to exceed \$100,000, of which amount \$62,500 had already been subscribed.

Upon motion duly made and seconded the participation of the corporation in the syndicate was unanimously approved, and it was resolved that the copy, or a copy rather of the said syndicate agreement be attached to the minutes of this meeting.

There being no further business it was voted to adjournment. H. M. Hogan, Secretary.

Q. Mr. Smith, do you still own all of the stock of the Innisfail Corporation?—A. No, I own none.

Q. I hand you three documents entitled "Memorandum of Sale" and ask you whether or not your signature is subscribed to those documents [handing]?—A. It is.

Q. And what did you do with those documents after you signed them?—A. I think that I instructed Mr. Doty to file them away for the benefit of—or among the records of the purchases of the stock so that they would have a record of the transaction.

Q. Mr. Smith, what records do you keep in your office?—A. Well, I keep very, very voluminous records. I suppose we have in our office the records of a hundred corporations. We certainly have, I should say, seventy or eighty separate corporations that have to do with the General Motors Corporation and its affiliates all over the world, General Motors Corporation records, and besides I am the president of General Motors Management Corporation, which has not anything to do with General Motors, and those records are either in my office or in the office of somebody from the building. They are very, very voluminous records, stock records, minute records, financial records, regular file records. The same thing is true with regard to the Innisfail Corporation. All of its records, stock records, minute books, financial records, cash books, check books, they are all in my office. And besides that I am the president of the Argonaut Consolidated Mining Company, and all of its stock books and record books, financial documents, they are all in my office.

The same thing is true of the White Knob Development Company, of which I am the president. All of its stock books, minute books, account records, they are in my office, and there are a good many other corporations, but broadly speaking, that is about the sort of record situation we have in my office.

Q. And do you keep any individual records in your office?—A. Yes, all of my individual records, all of my cash books, all of my ledgers, all of my journals, all of my business correspondence, that is in my office.

Similarly, in regard to Mrs. Smith's books, except we do not keep her check books. She writes her own checks, and keeps her own check book. We, however, keep the records of her securities, keep the records of her income, and we look after her income tax return, prepare those returns for her and similarly in regard to my chil-

dren, all of their business records are kept in my office, and we prepare their business reports, too, from my office.

Mr. SHER. Plaintiff offers in evidence three documents entitled "Memorandum of Sale," each dated December 22, 1934.

Mr. PRATT. I object to the introduction of these in evidence, if your Honor please, as immaterial.

The COURT. Is that the only basis?

Mr. PRATT. Yes, your Honor. I urge they are completely immaterial. They are executed in December 1934.

70 The COURT. All right. Objection overruled. I don't know whether they are material or not. We will find out as the case progresses.

(Marked "Plaintiffs' Exhibit No. 21.")

Mr. PRATT. Exception.

The COURT. If they are not connected you can move to strike out.

Mr. SHER. John Thomas Smith, 1775 Broadway, New York, New York, memorandum of sale, December 22, 1934. I have this day sold to Maureen V. Smith, 1115 Fifth Avenue, New York, New York, 331 1/3 shares of the capital stock of the Innisfail Corporation for the sum of \$119,110.29, John Thomas Smith, 1775 Broadway.

Memorandum of Sale, December 22, 1934. I have this day sold to Gerard C. Smith, 1115 Fifth Avenue, New York, New York, 331 1/3 shares of the capital stock of the Innisfail Corporation for the sum of \$119,110.29, John Thomas Smith, 1775 Broadway, New York, New York.

Memorandum of Sale, December 22, 1934. I have this day sold to Gregory B. Smith, 1115 Fifth Avenue, New York, New York, 331 1/3 shares of the capital stock of the Innisfail Corporation for the sum of \$119,110.29. All signed John T. Smith.

Q. Mr. Smith, I hand you a certified copy of gift tax return of John Thomas Smith for the year 1934, and ask you whether or not your signature is subscribed to that photostat [handing]?—A. It is.

Mr. SHER. Plaintiff offers in evidence a certified copy of the gift tax return of John Thomas Smith, for the year 1934, showing the disposition of the stock in Innisfail Corporation.

71 Mr. PRATT. If your Honor please, I object to the admissibility of that on the ground that it is immaterial. It is a record of a transaction which occurred in December of 1934, having no bearing on the issues in this case.

The COURT. Objection overruled.

Mr. PRATT. Exception, please.

The COURT. I reserve the right to you to move to strike out, if this exhibit is not connected with the issues in this case.

(Marked "Plaintiffs' Exhibit No. 22.")

Mr. SHER. Gift tax return, John Thomas Smith, Southampton, New York, 1934, showing a tax for the year 1934 of \$35,325.30, on net gifts, gift to Maureen V. Smith, Ox Pasture Road, Southampton, New York, daughter, 331 1/3 shares, \$100 par value, capital stock of

Innisfail Corporation, 15 Exchange Place, Jersey City, New Jersey, incorporated June 1926, market value \$306,392.03, less purchase price of \$119,110.29, being a gift of \$187,281.74, and the same for Gregory B. Smith and Gerard C. Smith.

Q. Mr. Smith, could you explain how it came about that you sold the stock in Innisfail Corporation to your children and at the same time paid a gift tax?

Mr. PRATT. I object to that.

Mr. SHER. On that transaction.

Mr. PRATT. Excuse me. I object to that question, if your Honor please. It is also immaterial.

The COURT. Same ruling.

Mr. PRATT. Exception, please.

A. Well, the reason I incurred a gift tax was that I was making a gift of approximately \$187,000 to each of my children, because I was selling them the stock at what it cost me and the stock to me was that much less than the market value of the stock, so that under the law, I was selling to my children some stock for less than its market value to the extent that the market value exceeded what I was getting. Under the law, that constitutes a gift and that is what I had to pay this gift tax for.

Q. Mr. Smith, did you ever receive back any of the stock in Innisfail Corporation from your children or any of them?—A. Nothing ever came back.

Q. Mr. Smith, how was the price at which the various securities were sold by you to Mrs. Smith and to Innisfail Corporation determined?

The COURT. Now, you will have to take that up in detail if you please, because there are several securities involved and we will have to take one at a time.

Mr. SHER. All right.

Q. How was the price of 2,000 shares of General Motors stock which you sold to Mrs. Smith determined?—A. We took the quotations on the New York Stock Exchange the date of the sale.

Mr. SHER. With consent of counsel I will read into the record from the New York Times of Friday, December 30, 1932, transactions on the New York Stock Exchange of Thursday, December 29, 1932, General Motors first $12\frac{1}{4}$, high $12\frac{7}{8}$, low $12\frac{1}{8}$, last $12\frac{1}{2}$.

Q. Mr. Smith, how was the price of the Electric Auto Lite stock, which was sold to Innisfail Corporation, determined?—A. On the same basis. That stock was traded in on the New York Stock Exchange and Mr. Doty was told to get the market value at that time.

73 Mr. SHER. Reading from the New York Times of the same date transactions on the New York Stock Exchange for December 29, 1932, Electric Auto Lite, first $17\frac{7}{8}$, high 18, low $17\frac{1}{4}$, last $17\frac{7}{8}$.

Q. How was the price at which the Firestone Tire & Rubber Company stock was sold to Innisfail determined?—A. On the same basis, the quoted prices on the New York Stock Exchange.

Mr. SHER. From the same quotations, Firestone Tire & Rubber, first $13\frac{1}{4}$, high $13\frac{1}{4}$, low $12\frac{3}{4}$, last 13.

Q. How was the price at which the National Sugar Refining stock was sold to Innisfail determined?—A. I think that was on the Curb Exchange; took the market price on the Curb, I believe.

Mr. SHER. Reading from the New York Times, Friday, December 30, 1932, transactions on the New York Curb Exchange for Thursday, December 29, 1932, National Sugar, first 21, high $21\frac{1}{8}$, low 21, last $21\frac{1}{8}$.

Q. How was the price at which you bought the Standard Oil of Indiana stock from Mrs. Smith determined?—A. My recollection is that at that time the Standard Oil of Indiana was traded in on the Curb. If it were, it would be from a Curb quotation, sir. Since then it has been listed on the Stock Exchange. However, I think at that time it was on the Curb.

Mr. SHER. I am reading from the New York Times of the same date transactions on the New York Curb Exchange for December 29, 1932, Standard Oil of Indiana, first $21\frac{1}{2}$, high $21\frac{3}{4}$, low $21\frac{1}{2}$, last $21\frac{3}{4}$.

Q. How was the price at which the National Baking stock was sold and determined?—A. I think in that particular case I asked Mr. Doty to get all of the quotations that he could find over a considerable period of time, because that stock is not an actively traded in stock like the ones just referred to, and he got the figure from a consideration of all the quotations of National Baking common for quite a period of time.

The COURT. "Quite a period of time" does not tell us very much.

The WITNESS. Well, I think, if your Honor pleases, during that year, from July on to December, I don't think there were very many trades.

Mr. SHER. Reading from banking quotation record, National Baking Company ranged for the year 1932 sale prices, on May 17.

Q. Mr. Smith, how was the price of the Gaynor Electric Company stock determined?—A. Well, that was determined by conversations between myself, I think, and Mr. Hogan, representing Innisfail Corporation, as to what would be a fair price for that stock which was not quoted in any market. There had been no sales in it at all, and we agreed that \$10 a share, I think, was a fair price, and that was the basis of that price fixing.

Q. Did you ever try to dispose of that stock elsewhere?—A. Well, subsequently we have offered stock at \$10 a share and it was not taken.

Q. How did you determine the price at which you sold the Investrad stock?—A. Well, that price was determined. Investrad Corporation being a holding or an investment corporation, its assets consisted of various securities and all of them were securities which had a readily ascertainable market value. Being, I think, exclusively securities traded in on the New York Stock Exchange. So, the book value of the Investrad stock was taken from

its holdings by dividing its net work by the number of shares at the time of the transfer.

Q. Mr. Smith, what was your intention with respect to your 1932 Federal income-tax return at the time you signed and filed it?—A. Well, my intention was to make a full, fair, honest, complete return, showing exactly what I owed the Government and giving the Government the basis of a complete investigation of the whole thing.

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Cross examination by Mr. PRATT:

Q. Mr. Smith, you testified that you are a lawyer?—A. Yes.

Q. You are a lawyer and chief counsel of General Motors, is that your title?—A. Yes, sir. Not chief, general.

Q. General counsel?—A. A technical name.

Q. Are you an officer of General Motors also?—A. Yes, sir.

Q. What is the office you hold?—A. First vice-president of General Motors Corporation, one of the vice-presidents, I should say.

Q. And are you president of the General Motors Management Corporation?—A. Yes, sir.

114 Q. You testified on direct examination, Mr. Smith, that you sold 500 shares of Electric Auto Lite to Innisfail Corporation. Do you recall that?—A. Yes.

Q. And 500 shares of Firestone Tire and Rubber?—A. Yes.

Q. And 232 shares of Gaynor Electric?—A. Yes.

Q. 1,553 shares of Investrad?—A. Yes.

Q. 18,324 shares of National Baking?—A. Yes.

Q. And 800 shares of National Sugar Refining?—A. Yes.

Q. Did you deliver those securities to anybody at Innisfail Corporation?—A. The details of the transactions, and all these other transactions—

Q. Just these transactions, please.—A. The details of these transactions were handled through Mr. Doty, who has charge of the securities, cash; and so forth, and also looks after the certificates, accompanied me to the vault when any certificates are to be deposited or any certificates to be taken out, and he keeps a record of all of the ownership of all of the certificates in this box, and all the other relations, so that there is a permanent record of who owns certificates, how our accounts stand, so the details of the transfer were exclusively Mr. Doty's work.

MR. PRATT. I do not mean to be offensive, your Honor, but I move that that answer be stricken out and that the witness be more specific and responsive.

THE COURT. Yes. The question was how did you effect delivery of these certificates. What did you do? That is what he wants to know.

THE WITNESS. May I ask which certificates he is talking about?

Q. The Innisfail transactions, the one I just described, the 500 shares of Electric Auto Lite.

115 MR. SHER. The 500 shares of Firestone.

THE WITNESS. I think the way that this thing happened was this—

Q. Do you know, Mr. Smith?—A. Yes. I am telling you how it must have happened. This is my best recollection of the transaction. Mr. Doty and I would go to the box of the Innisfail Corporation or in the case of the securities that I was selling to the Innisfail Corporation, to my box, and the stock that would be taken by Mr. Doty for transfer. When it came out of transfer, then the certificates would be taken by Mr. Doty along with me to the safe-deposit box where the Innisfail Corporation securities were kept and put in the box.

The COURT. Where was that?

The WITNESS. Those securities at that time were in the Chase Bank, 57th Street.

The COURT. And in what box, please?

The WITNESS. I am not clear at this moment as to whether it was in the box, for example, of the Argonaut Consolidated Mining Company, or whether the Innisfail had its own box. I am not clear as to that, but the records will show that. The records will show that and you can tell exactly.

Q. Well, didn't you put them in a box in your name?—A. Oh, no; not my name.

Q. Didn't you have more than one box over at Chase?—A. Oh, yes.

Q. Didn't you put the securities transferred in December of 1932—A. We had several boxes. We still have several boxes, and I can't tell precisely whether the Innisfail had its own box or whether the securities of the Innisfail were in some other box. For example—

116 Q. That is sufficient. A. Excuse me?

Q. You don't know whether or not the Innisfail Corporation—A. Not at this moment.

Q. As a matter of fact, don't you know that they had no box?—A. No; I do not.

Q. Don't you know that these securities were put in your box?—A. No; and I could check that up very easily, but I have no particular recollection of that particular thing how, but I will say that I carry in my box a lot of securities for a lot of companies and a lot of people, and I do.

Q. Mr. Smith, you formed the Innisfail Corporation back in 1926, did you not?—A. I caused it to be formed; yes.

Q. Will you please state what you did in causing it to be formed, the physical steps taken, if you please.—A. We told somebody that we would like to have a corporation formed under such and such a jurisdiction, with such and such an amount of capital stock, with broad corporate powers, and I suppose somebody in the office proceeded to draw up the certificate of incorporation, and in due course the Innisfail Corporation was formed.

Q. And did you pay the expenses that attended the formation?—

A. I think I did. I think so.

Q. Do you remember how much that was? \$50 or \$100?—A. I don't; not a great sum.

Q. A small amount?—A. Rather a small amount.

Q. And did you cause certain individuals to become incorporators?—A. Well, certain individuals became incorporators. I did not cause them.

The COURT. He wants to know whether you provided dummies or somebody else did.

The WITNESS. I did.

The COURT. You did?

The WITNESS. Yes, sir.

The COURT. And who were those dummies?

117 The WITNESS. Mr. Hogan, I think, was one, and Mr. Russo.

I think, was the other. The incorporator—whether they were incorporators or not, I don't know, but they became the directors of the corporation.

Q. Who was Mr. Russo?—A. Mr. Russo is a General Motors lawyer, 1775 Broadway, has been associated with me for many years.

Q. One of your subordinates?—A. Yes; one of the employed counsel in General Motors Corporation.

Q. And Mr. Hogan?—A. The same thing applies to him.

Q. One of your subordinates?—A. Yes.

Q. Wasn't there a third person?—A. Maybe.

Q. Frank A. Gaynor?—A. Yes; Mr. Gaynor was also an officer at that time. Maybe he was one of the incorporators.

Q. Was he in the same capacity? That is, a subordinate to yours of General Motors?—A. Oh, yes.

Q. After the corporation was formed did you invite Mr. Russo, Mr. Hogan, and Mr. Gaynor to become participants in the venture? That is, buy more stock or buy some stock in the new corporation?—A. No.

Q. They were acting as your dummies?—A. Substantially so, yes. That is, dummies in the sense that all of the stock of the corporation was in my ownership.

Q. That is, you had the entire 100 shares transferred to you?—A. No; I didn't have them transferred, but I owned them, so that I own the corporation 100 per cent, but that does not—that does not mean that these people were not directors or were not officers.

Q. Well, was all the stock issued to you?—A. No; I think there were a few shares issued to these directors for the purpose of qualification, and I think in turn they endorsed those certificates
118 over to me, because the real purchase price for the stock of the Innisfail Corporation was being furnished by me, and that stock was my stock.

Q. And what did you give to the corporation in exchange for all of the corporation's stock?—A. I think the transaction had to do with turning over to them some Chrysler stock.

Q. 23,477 shares of Chrysler stock or the equivalent?—A. No; I think it was originally 5,000 shares of Chrysler stock.

Q. Preferred stock?—A. Of course, at times it was converted into Chrysler common. I think that was the first transaction with the

Innisfail Corporation, the acquisition of that stock, and then it proceeded into various other things.

Q. And what was the reason that you caused the formation of this Innisfail Corporation, Mr. Smith?—A. Well, I wanted a business corporation, because a business corporation at that time had certain advantages that appealed to me.

One of the advantages, for example, was that when you came to die there was a great deal of uncertainty as to how many States could collect inheritance taxes on securities. For example, if you owned some United States Steel stock at that time you were apt to have to pay a Federal inheritance tax on United States Steel stock, and you could have been assessed by the State of New Jersey an inheritance tax because the Steel Corporation is incorporated in the State of New Jersey, and as I live in the State of New York I was also liable for a third inheritance tax, because the law of New York had a right to tax on that stock, so that I thought at that time it was apt to be very advantageous for me to get holdings into a corporation, because the corporation does not die, and the stockholders in a corporation are only subject to the Federal Inheritance tax, plus the State inheritance tax. That was one of the things I had in mind.

119 The second thing that I had in mind was that at that time there were certain advantages in having your money invested in a corporation engaged in business. One of the things that appealed to me was that a corporation could buy and sell securities without incurring some tax liability that an individual would incur. For example, the corporate rate at that time—at that particular time, I think it was about $12\frac{1}{2}$ per cent., so that if I wanted to buy 500 shares of something and sell it, if I made \$12,500 on that transaction, when it was a transaction that went through the corporate route, the tax on it would be one-eighth, one-eighth of that, whereas if I traded as an individual and made that \$12,500, I would have been subject to a tax of say 30 or 40 or 50 per cent., because 'net profit would be subject to the normal income tax, and also subject to a very high surtax.

And, therefore, one of the advantages of trading at this particular time in a corporation was that you buy and sell things much more advantageously at times than if you were doing that as an individual. Therefore, you could engage in transactions with a profit, but you could not afford to go into that at all on account of the high surtaxes that you would incur if it was just your individual transaction.

So, I would say that those were the two principal reasons I had in mind when I caused this Innisfail Corporation to be formed in 1926.

Q. And you had in mind, didn't you, at that time, the taxable gain which would accrue on the exchange of the Chrysler stock?—A. Oh, I had in mind all questions that would accrue to the Chrysler stock or any other stock that I wanted to route through this corporation, and the Chrysler was one of the things that in due course came along and was acquired by this corporation, and when the corporation made

120 an exchange, if there was a big profit, the Aldebaran Corporation paid a very stiff tax to the Government on that profit, as well as on any other profit that was made up to the present time.

Q. You did not transfer the 26,477 shares of Chrysler stock which resulted from the exchange, for the 5,005 preferred in 1926, into the name of the Innisfail Corporation, did you?—A. No.

Mr. SHER. I object to that as going far afield, improper cross examination.

The COURT. I think the Innisfail Corporation may well be the subject of very careful inquiry. I think it is necessary that that should be so.

Mr. SHER. All right. I will withdraw my objection, your Honor.

The WITNESS. No; those stock certificates were not transferred out in the name of the Innisfail Corporation.

Q. They were kept in your name?—A. They were kept in my name for their account on their records and my records, as happens with most of our securities, which are carried in the name of nominees for the purpose of convenience, because it is a very much more simpler matter to transfer securities standing in the names of individuals provided they are not women than it is in the name of a corporation, because if it stands in the name of a corporation there is quite an elaborate detail that has to be followed as the transfer agents insist on a certified copy of a resolution of the board of directors authorizing the officers of the corporation, in whose name the stock stands, to sell it and so forth.

Q. And you, as general counsel of the General Motors Corporation, advised that, acting through the General Motors Corporation?—A.

121 Always. Sometimes to our sorrow we get a tax of \$12,000 on a transfer because the stock stood in the name of a secretary who died three weeks ago and had been for 20 years or more an employe and belonged to the corporation, and now when the secretary is dead, why you have to pay this tax, and that is good corporate practice and it has certain conveniences and also some disadvantages.

Q. Did the directors of Innisfail Corporation authorize to be their nominee?—A. Oh, surely.

Q. In a resolution? Does that appear in the minutes?—A. No; there is no resolution. This Innisfail Corporation was a very informal corporation. Everybody in the Innisfail Corporation knew what the situation was and approved of the method of doing business and what was done.

Q. Did you ask whether permission—A. What is that?

Q. I asked, was it necessary to secure their permission or did you ask their permission?—A. I did not ask their permission.

Q. You did not leave the matter to them at all, did you, Mr. Smith?—A. We discussed the matter. Everything that was done was discussed and approved.

Q. Would you have done it if they would not have approved?—A. I don't know.

The COURT. Please.

The WITNESS. Because that is a leading question.

Q. That 26,477 shares of Chrysler back in July of 1926, was worth approximately \$900,000, wasn't it?—A. It was worth a lot of money. I don't know how much it was worth at that particular time.

Q. And the dividends on that stock in the year 1926 were \$9,000?—A. I can guess it, but I can't tell any particular year what the dividends of Chrysler were. I know the dividends were very large for a great many years.

122 Q. The dividends would be paid directly to you?—A. Well, yes, sir. They would be paid to me and accounted for.

Q. Just a minute, please.—A. By me to the corporation.

Q. And you got the dividend checks, didn't you?—A. Oh, yes. If the stock stood in my name I would get the dividend check in the first instance.

Q. And then you deposited that check to your own bank account, didn't you?—A. Well, I got the record, sir, of all the money received by me which went through my bank account and was accounted for.

Q. Did you execute a declaration of the fact in favor of Innisfail Corporation that you were acting merely as a nominee?—A. Oh, no. I assigned the stock power so that they owned the stock. They were the ones who could have fired me any time they wanted to. I did not own the stock. Any time they saw fit they could put it in the name of anybody.

Q. Well, do you, as a matter of practice, take the General Motors, they were owned securities. Did you put that in the name of a nominee, an employee, for instance, and get no declaration to that effect?—A. Never heard of a declaration to that effect. What we get is a signed power of attorney, transferring that stock, so that just as soon as we do not like the way the nominee behaves, we put it in the name of somebody else. We do not ask him for any declaration, because the declaration is useless. We got the stock and got the assignment from him, and he has not anything except this nominal record interest that can be cut off in one minute.

Q. You say you executed powers of attorney assigning the stock?—A. Either the stock was endorsed in blank by me or I signed powers of attorney to uncover that stock, and the only difference between signing a stock certificate and signing a stock power is that it is
123 inexpedient sometimes to have stock certificates lying all around endorsed in blank. They sometimes get into trouble.

Q. You don't recall whether you endorsed this stock?—A. I don't recall whether I endorsed this stock on the back of the stock.

Q. Or whether you executed a stock power?—A. Or whether I executed a stock power, but I transferred the title absolutely in those stock shares from me to the Innisfail Corporation either directly or through its nominee.

Q. Was there some instrument in existence which would indicate that you had or not?—A. Of course, the instrument itself, that is, the stock certificate, was the instrument or the stock power, plus the records of the Innisfail Corporation, plus my own records.

Q. There was nothing on the certificates to indicate that, was there?—A. The only thing on the certificate was an endorsed certificate in blank, which was an indication that the man who has it can transfer it. That is the best indication, like a bill, a dollar bill. It does not have to be—I am not sure now, because they changed them. You used to say the borrower. Now they say something else.

Q. But the Innisfail Corporation had no instrument in its possession or has no instrument in its possession that would indicate that?—A. They had the stock.

Q. The stock itself? A. They had the stock power, yes. They had the stock, the stock power. They had their records to that effect, and they had my records to that effect.

Q. If you were to die possessed of that stock in your name would Innisfail have experienced any difficulty in proving that it was its stock rather than yours?

Mr. SHER. I object to that, your Honor. It is clearly improper.

124 The COURT. Really, the question is quite difficult. You have in mind such transactions as the witness has testified to, namely, the issue of stock certificates in his name which he said he held as the nominee, plus the execution by him of the stock power attached to the certificate, followed by delivery by him to some custodian of the Innisfail Corporation. Make your question clear and then he can tell you whether there would have been any difficulty about securing a transfer in the event of his death, and he is specially qualified because of his standing as general counsel of a large corporation that has to put through thousands of these transactions at all times. On that theory I will allow the question to be answered, but you must make it coherent.

Mr. PRATT. I will adopt your Honor's question. Will you answer that?

The WITNESS. NO. I can't conceive of the slightest difficulty of the Innisfail Corporation going ahead and changing that stock from the name of any nominee to itself or to its own nominee. For example, at the present time, I think that Mr. Doty here is the nominee of some securities of the Innisfail Corporation, because it is considered expedient to have the stock in his name. Mr. Doty has not got any more interest in the stock than any of you gentlemen, but that is good standard practice if you are interested in the convenience of the thing.

Q. Are the dividends paid to Mr. Doty on the stock of which he is the nominee?—A. They are unless there is a dividend ordered. Mr. Doty directs that the dividends on the stock or on so many shares of the stock are to be paid as he directs, and maybe that is the exception. That certainly is good practice, too—

125 Q. But, Mr. Smith—furthermore, that is the usual practice?—A. For prudential reasons.

Q. That is the usual practice, isn't it?—A. No; I don't think so. For example, in many cases the National Baking Company, for

example, I happened the other day to have to write to a couple of brokers with respect to this particular stock, the National Baking Company, and I wrote them a letter, and also with reference to 5,000 shares of General Motors stock belonging to the National Baking Company, and I wrote them a letter, will you please be good enough to forward to me for the National Baking Company the General Motors dividends that you have received on such and such a date in respect of so many shares of General Motors stock belonging to the National Baking Company, and that is, I think, the regular practice with all brokers.

Q. But prior to the regular practice you gave no dividends or other returns to the Innisfail Corporation, did you?—A. I am not sure that I understand your question.

Q. I say prior to the regular practice, you gave no dividend orders to Innisfail Corporation, did you?—A. Brokers do not give dividend orders. I have just tried to explain to you that they collected the check and gave me the check or a check for it.

Q. Nominees give dividend orders, don't they?—A. No, no; it is entirely—

Q. Didn't you tell Mr. Doty directly to do that?—A. I don't know whether Mr. Doty has or whether he has not. I am sure in some cases as I am sure in other cases he has not. The only question involved is how much you are willing to trust your nominee. If you don't trust him very much you ought not to have him as your nominee. If you got perfect confidence in him, why, then, you are justified in trusting him. I do not believe that the Innisfail Corporation has ever had any fault with me as its nominee to receive dividends on its stock. At least, I never heard of it.

125 Q. So you never had to worry much any way? You owned all the stock, didn't you?—A. Surely, surely. For example, I can't understand why they should have worried very much about it.

Q. So that in time if Innisfail would lose \$10 or \$1,000, there was a loss of \$10,000 or \$10, as the case may be, to John Thomas Smith, isn't that so?—A. That is not the way it happens in corporate practice at all, because the stockholder does not lose or gain every time a corporation loses or gains. He only loses or gains when he gets something out of the corporation because the corporation may gain. Let us say today the corporation may gain a million dollars, but they may lose it tomorrow. The stockholder never gets it; so that there is this wide gulf between a corporation and its stockholders.

Q. You call it a gulf?—A. Yes; a terrific gulf.

Q. Was there such a gulf in your Innisfail Corporation?—A. There was a tremendous gulf.

Q. Between you and Innisfail?—A. For example, when Innisfail Corporation paid a tax on this transfer on this Chrysler preferred into Chrysler common, of course, there was a tremendous gulf. I wasn't doing it. It was doing it, and it was paying it on this tax record of gain or loss, not on my record of gain or loss. That is

entirely separate and distinct from me, and the liabilities are all different.

Q. Although you owned the stock?—A. Although I owned the stock. I own a lot of stock in General Motors. It is exactly the same. When General Motors has a dividend tax to pay, it has to pay it.

Q. Your relationship as a stockholder of General Motors is exactly the same as your relationship as a stockholder in Innisfail Corporation?

Mr. SHER. I object to this line of questioning as argumentative, your Honor.

127 The WITNESS. So far as—

The COURT. I can't agree with you. I think the jury are entitled to know what variance there is in the possible relationships between a stockholder who owns 100 per cent of the stock in one corporation and a stockholder in a large corporation who owns only a slight fraction of the corporate stock. Personally, I think it has an important bearing.

Mr. SHER. Your Honor, my objection was that the question called for the witness's conception of what a particular stockholder's position was.

The COURT. It is important, because after all is said and done, he is asserting that because of his relationship to the Innisfail Corporation he could divest himself of certain property and transfer and deliver that property to the Innisfail Corporation and in his individual capacity register a loss for income-tax purposes. That is one of the important aspects of this entire litigation. Now, it is quite important for the jury to have an accurate and a complete picture of the true status of such a corporation wholly owned by the individual taxpayer. It is rather elusive if you will allow me to say so.

Mr. SHER. It is a question of law, is it not, your Honor, whether a sole stockholder may realize the loss on the sale to a corporation?

The COURT. I am not indicating that, but I say the jury is entitled to the most complete information possible with respect to this particular situation.

Mr. SHER. I do not want to object to any question relating to the factual situation, that is, between Mr. Smith and the Innisfail Corporation, but I was objecting to a line of questioning that is no more than argumentative, and I thought that it was simply a waste of time.

128 The COURT. I do not think so, because after all is said and done the factual situation is such that when one man owns all of the 100 shares of one corporation, somewhat it depends upon that man's mental concept of the thing which he has brought into existence, namely, the corporation, the thing which he keeps operating through persons of his own selection, and I think the jury are entitled to know the extent to which the corporation does function as a corporation, the extent to which the thing that we like to call the corporate entity really lives and breathes and has vitality. I say all those

things somewhat depend upon the frame of mind of the individual who is the only stockholder.

Mr. SHER. I will withdraw my objection.

The COURT. On that theory I am allowing this question.

Mr. SHER. I will withdraw my objection.

The WITNESS. So far as individual exercise, I have an undivided interest, yes; but I must concede that I have certainly a great deal more or I did have at this particular time, to say with regard to the affairs of the Innisfail Corporation than I have with regard to the affairs of General Motors Corporation for the very good reason that my interest is very much larger, but so far as a separate corporation is concerned, it was my purpose to have the Innisfail Corporation just as independent, to stand on its own bottom, as the General Motors or any other corporation.

Q. You wanted to remain independent?—A. Surely. I wanted to remain independent; precisely.

129 Q. Well, could that corporation have functioned after its creation without you?—A. Surely, it could.

Q. Why, for instance, could those directors of yours have ordered you to buy or sell Chrysler?—A. They could not have ordered me to buy or sell Chrysler. It is a little unlikely that they would have ordered me.

Q. Could they have ordered you to turn the dividends in cash to them rather than put those dividends in your own bank account?—

A. Surely. Those men are lawyers. They are charged with a very high degree of responsibility. They know what is right and what is wrong and they know that simply because they are not heavy stockholders that does not excuse them from their obligations to comply with their duties as directors, and that is what they tried to do in this particular situation.

Q. You say—A. Any one of them that did not like the way the corporation was being run, all he had to do was to decline to go ahead. Nobody could compel him to do so.

Q. Did each of them execute their letter of resignation to you?—

A. I think one or two of them did or made it by assignment and so forth. I am sure that any one of them at any time I requested his resignation would have been perfectly willing to give it.

Mr. SHER. I move that be stricken as not the best evidence. He is referring to a written resignation.

The COURT. Oh, I will let it stand. It is not very important.

Q. You said that those young lawyers were not heavy stockholders?—A. Yes.

Q. As a matter of fact, they were not stockholders at all, were they?—A. Oh, yes; they were stockholders of record.

130 Q. Of record?—A. Yes.

Q. They did not own the stock?—A. They were not the owners of stock. They had endorsed stock over to me.

Q. They were just your nominees?—A. They were my nominees; yes, sir.

Q. Did they in addition to endorsing that stock over to you execute any other instrument?—A. What sort of an instrument?

Q. Well, renouncing any rights to the stock that might flow from the fact that the stock was recorded in their name.—A. Oh, no; that is covered, as I tried to explain before, when they assigned the stock certificate, that is the most, a most effective renunciation of interest, like deeding your house away, having it recorded or not recorded.

Q. It would be unrecorded, wouldn't it?—A. Unrecorded, yes. That is a pretty effective way to get rid of your house.

Q. Referring to Plaintiff's Exhibit 20 in Evidence, I call your attention to communications indicated in said exhibit on pages 42, 43, and 44, and ask you if the writers thereon are known to you?—A. Yes, sir.

Q. That is, Anthony J. Russo?—A. Anthony J. Russo.

Q. Frank A. Gaynor?—A. Frank A. Gaynor.

Q. And Henry M. Hogan?—A. Henry M. Hogan.

Q. Charles R. Carroll?—A. Yes.

Mr. PRATT. I would like to direct the jury's attention to this, if your Honor please.

The COURT. All right.

Mr. PRATT. In this book of the corporate minutes there are some communications from Anthony J. Russo, Frank A. Gaynor, and Henry M. Hogan, reading as follows:

"New York City, June 15th, 1926, Board of Directors Innisfail Corporation.

131. "Gentlemen: I hereby resign as vice-president and a director of your corporation. My resignation to take effect upon acceptance by you. Very truly yours, Anthony J. Russo."

Q. That Anthony J. Russo was your subordinate in the office at 1715 Broadway?—A. Yes; he was one of the lawyers in the legal department of General Motors.

Mr. PRATT. And a letter by Frank A. Gaynor on June 15, 1926, on page 43 reads:

"BOARD OF DIRECTORS, INNISFAIL CORPORATION."

GENTLEMEN: I hereby resign as president and a director of your corporation. My resignation to take effect upon acceptance by you. Very truly yours, Frank A. Gaynor."

Q. He was one of your men?—A. He was similarly employed.

Mr. PRATT. "New York, June 15th, 1926.

"BOARD OF DIRECTORS, INNISFAIL CORPORATION.

"GENTLEMEN: I hereby resign as secretary and treasurer of your corporation. My resignation to take effect upon acceptance by you. Very truly yours, Henry M. Hogan."

"NEW YORK, June 15th, 1926.

"BOARD OF DIRECTORS, INNISFAIL CORPORATION.

"GENTLEMEN: I hereby resign as a director of your corporation, my resignation to take effect upon acceptance by you. Very truly yours, Charles R. Carroll."

Q. He is in the same category?—A. I think he was one of the incorporators in 1926. He is a lawyer.

132 Q. With these in your possession, you could have caused—
Mr. SMITH. I object to that as referring to a fact not in evidence. There is no evidence that they were in Mr. Smith's possession. They are in the Innisfail Corporation's minute book and counsel is trying to distort these resignations into resignations directed to Mr. Smith when they are resignations directed to the board of directors of the Innisfail Corporation.

Q. Did you ever see these resignations before today?—A. I doubt

Q. Didn't you know that they were ever executed?—A. I wouldn't say yes; I wouldn't say no, because it is—

The COURT. You assume they had been?

The WITNESS. Yes, of course; because this is a record of the corporate structure, or a picture of the people who act as incorporators, and so forth, of a corporation, because they usually resign and make way to the permanent officers, and I haven't any idea that I knew of the existence of that sort of resignation.

Q. Were those resignations written at your request?—A. No; I do not suppose I have ever requested anything about it. I would say that it was assumed by the lawyer who was charged with this job, one of the things of his job in forming a corporation of this kind or any kind, would be to see to it that the incorporators would resign or something, so that when the permanent organization was set up it would move on.

Q. Were any of these men, Russo, Gaynor, Hogan, and Carroll, members of your permanent organization?—A. Some of them continued on; yes.

133 Q. Can you tell us which ones continued?—A. Yes. Mr.

Hogan, I think, continued oh. Mr. Russo, I think, was a director, too; Mr. Carroll, I think, dropped out.

Mr. PRATT. If your Honor please, we ask your indulgence for an adjournment at this time if it is possible.

The COURT. Oh, yes; it is only five minutes before adjourning time and we will adjourn now until tomorrow morning at 10:30.

Members of the jury: I will have to recall to you what I said at noon. Do not let any person whomsoever communicate with you directly or indirectly about this case; do not discuss it among yourselves and do not attempt to decide it until it is submitted. We will resume tomorrow morning at 10:30.

(Adjourned to March 24, 1938, 10:30 A. M.)

NEW YORK, March 24th, 1938,
10:30 o'clock A. M.

TRIAL RESUMED

John T. Smith, resumed the stand:

Cross examination by Mr. PRATT (continued):

Q. Mr. Smith, since yesterday have you learned whether or not in whose name the Innisfail Corporation had a safe deposit box?—

A. No; I have not. I don't know that I was asked to.

134 Q. You don't know now whether or not—A. Mr. Doty can answer that question, you know. I am perfectly willing to give you the answer.

Q. I would like to take you or speak to you about the early entries in the Innisfail Corporation. Have you a transcript of your own account or anything else with which you would like to refresh your recollection?—A. Yes.

Q. When the Innisfail Corporation started out, its only asset was the Chrysler stock, wasn't that back in—A. Substantially so, when it started.

Q. Then you made expenditures in behalf of the Innisfail Corporation, did you not?—A. Yes.

Q. For instance, on June 15th, 1926, you paid out \$44.39.—A. Yes.

Q. Which was the cost of incorporating Innisfail Corporation?—A. No; and some disbursements in connection with the cost.

Q. Then, do you add \$200 for the Federal and State transfer tax?—A. No; the item here reads \$44.39, miscellaneous disbursements covering cost of incorporating.

Q. Then, you have other items there, Federal tax?—A. Minute books, stock sales, stock certificates, stock ledger.

Q. So the aggregate of those items represents the cost to you of incorporating the Innisfail Corporation, does it not?—A. Substantially, so; yes. You are talking now about approximately \$266 or \$267.

Q. On the credit side you have indicated there dividends on 26,477 shares of Chrysler stock.—A. Yes.

Q. And on June 30th there is an entry of \$19,857.75.—A. That is correct.

Q. It is true that that dividend was collected by you and credited to your own bank account, isn't that correct?—A. It was collected by me and put in my bank account.

Q. Yes?—A. And a credit was set up on my books in behalf of the Innisfail Corporation against me.

Q. And you did not pay over any cash, any funds, to Innisfail Corporation?—A. Not a bit.

135 Q. Did you?—A. Not on those particular dates; later, yes.

Q. On October 1st you also received \$19,857.35?—A. The dividend of October was \$19,857.75.

Q. And that dividend you also deposited in cash to your own bank account?—A. Yes; and charged myself insofar as Innisfail Corporation was concerned.

Q. Did Innisfail Corporation have a bank account of its own in 1926?—A. I think so.

Q. Can you make sure, Mr. Smith, in some way?—A. Mr. Doty can do it. He kept it if we had it.

Q. He would have that?—A. Yes. Mr. Doty, will you please let me have the records pertaining to that?

[Book handed to the witness.]

Q. Mr. Smith, will you please let me know whether the Innisfail Corporation had a bank account of its own in 1926?—A. Yes. The bank account of the Innisfail Corporation was opened on the 15th of March 1927, by a deposit of \$20,000, in the Central Mercantile Bank and Trust Company.

Q. So you could not have turned the cash over to the Innisfail Corporation during 1926, because it did not have a bank account?—A. No.

Q. On March 15th, 1927, there is an entry, \$20,000 in cash?—A. Yes.

Q. Is that a transfer of funds from your bank account to Innisfail Corporation's bank account?—A. Yes. In other words, I think that explains the opening of the bank account. That is, I deposited \$20,000 on March 15th, 1927, to the credit of the Innisfail Corporation.

Q. Well, it opened its own account at that time with that cash?—A. Yes.

Q. Who had the power of withdrawal in the Innisfail Corporation's bank account?

136 Mr. SHER. I object to that as not the best evidence. The minute book, which is in evidence, will show who had power to sign checks.

The COURT. If the witness knows he may state so and if he does not know, he may say that.

The WITNESS. I do not know at this time who were the ones. I assume that I had some authority.

Q. Do you know whether anyone else other than you had any authority?—A. I don't know, but I am sure there was a resolution lodged with the bank specifying who could and who could not and under what circumstances withdraw funds from the account.

Q. Where was that bank account opened?—A. I think it was the Central Mercantile.

Q. I am going to read for you, in order to refresh your recollection, from Plaintiff's Exhibit 20 in evidence, on page 49 thereof, the following resolution: "Resolved that the following officer of the corporation, to wit, John T. Smith, president, is authorized to borrow money and to obtain credit for this corporation with said bank on such terms as may seem to him advisable, and make and deliver notes, drafts, assignments, and any other obligations of this corporation in form satisfactory to such bank," and at the top of page 49, as part of the resolution commencing on page 48, "Said bank, Irving Central Mercantile be and is hereby authorized to make payment

from the funds of corporation on deposit with it upon and according to the check of this corporation signed by its president."

Does that refresh your recollection as to whether or not you had the power?—A. Surely. If it is in the record, that is right.

Q. On June 15, 1927, you turned over \$15,000 cash?—A. Yes.

137 Q. To the Innisfail Corporation?—A. Yes.

Q. And was that deposited to its bank account?—A. Yes.

Q. Now we come down to September 15, 1927. You see another cash entry of \$17,500?—A. Yes.

Q. Do you recollect whether or not there was another cash advance in 1927?—A. Another one on December 2nd of \$15,000, another one on the 14th of \$15,000.

Q. Can you recall whether such cash advances were made by you in order to supply funds to Innisfail Corporation for the purpose of paying its income tax at that time?—A. Well, the money that I supposed to it was on account of its corporate purchases, and in part payment of its claim against me. For example, in 1926, I got these Chrysler dividends of approximately \$39,000 that belonged to them, so that in due course I paid over that \$39,000 or \$40,000, in connection with that, and in connection with any other matters I thought it was the value—

Q. But, Mr. Smith—

Mr. SHER. Do not interrupt the witness.

Mr. PRATT. Excuse me.

A. (Continuing.) It was the property of the corporation and I had loaned it money.

Q. In 1927 you collected on four occasions in that year, January 3rd, March 31st, June 30th, and September 30th, dividends of \$19,857.75 on Chrysler stock?—A. Those were the collections on the Chrysler stock belonging to Innisfail that stood in my name as its nominee.

Q. So that is approximately \$77,000 which you collected?—A. Substantially so and more.

Q. And then on December 23rd, you withdrew \$20,000 cash from Innisfail Corporation, did you not?—A. I did not withdraw it. There was a transaction whereby they paid me \$20,000. I had been advancing them these other amounts that you have referred to in part, and on the 23rd day of December they paid me \$20,000.

138 Q. Now we go to December 5, 1927, purchase of 500 shares of Gillette Safety Razor for \$49,750. Those par value shares of Gillette Safety Razor were purchased by you, were they not?—A. No; I think they were purchased by the Innisfail Corporation.

Q. Have you anything which would refresh your recollection?—A. Yes; we have.

Q. So that you can be definite?—A. We have the records of that purchase, I am sure.

Q. Where are they, please?—A. The original entry is here 833.
Mr. SHER. 834.

The WITNESS. December 5, 1927. Yes; that transaction was disclosed by the journal entry; was a purchase from me by the corporation of 500 shares of Gillette Safety Razor common at 99 1/2.

Q. Did the corporation in connection with that transaction turn any cash over to you as a result of that transaction?—A. Either then or at a later time. That is, I think the transaction there was set up, a credit of this \$49,000, which was what I was getting out of the transaction and the corporation was getting the 500 shares of Gillette stock at 99 1/2.

Q. But there was no check drawn to your order at this time, was there?—A. Well, I can't—I don't believe there was because otherwise it would not appear as a charge against the corporation in this account.

Q. Was that transaction on December 21, the purchase of 1,700 shares of Gimbel Bros. for \$68,000, the same sort of transaction?—A. Yes; the journal shows that that was bought, 1,700 shares of Gimbel Bros.

Q. By you?—A. By me, as per bill of sale, \$68,000.

Q. In that case the Innisfail Corporation did not draw any check to your favor?—A. Not at that time.

139 Q. At the end of 1927, did Innisfail Corporation owe you any money?—A. No. At the end of 1927 the balance was \$67,134.06.

The COURT. This is 1927?

The WITNESS. Yes, sir; 1927.

The COURT. What was the balance?

The WITNESS. \$67,134.06.

The COURT. In whose favor?

The WITNESS. In my favor.

Q. That is, Innisfail Corporation owed you?—A. Innisfail at the end of 1927 owed me \$67,134.06.

Q. Did Innisfail Corporation execute a note showing that indebtedness?—A. No, we never had any notes between myself and Innisfail.

Q. Did you charge any interest to Innisfail on any of the transactions?—A. No, I don't think I did.

Q. On the credit side in 1928, do you see a dividend on 26,467 shares of Chrysler for \$19,857.75?—A. Yes; that was received about that time.

Q. And there were other dividends on Gillette Safety Razor?—A. Yes; on 300 shares of Gillette Safety Razor the dividend was \$375.

Q. Was that Gillette Safety Razor also in your name at that time?—A. I think so, if I got the dividends. That would indicate that I was the nominee.

Q. Then, there is a dividend of \$19,857.35.—A. That is the Chrysler dividend on April 5th.

Q. On April 5th?—A. Yes.

Q. On July 2nd another one in the same amount?—A. Same amount.

Q. Then, there is the dividend of 30,889 shares of Chrysler in the amount of \$23,166.75 on September 29th.—A. Also, you have not called the item on July 20th, proceeds of sale Chrysler rights, \$13.75.

140 Q. Did you sell the Chrysler rights?—A. Yes; I sold them for the account of the Innisfail Corporation.

Q. I know, but you or when you sold them got the cash for them, didn't you?—A. Got the cash and received the credit, that is right.

Q. With reference to the Mardan Corporation, Menthol & Crystal account, can you tell us something about that?—A. Yes. That was a purchase of menthol, as a result of which there was the credit when the trade was closed of \$14,906.12, which belonged to the corporation.

Q. At the end of 1928 the corporation owed you what sum of money?—A. \$312,666.51.

Q. And never at any time did you exchange notes or charge any interest?—A. I had no occasion for notes.

The COURT. The answer is there were no notes?

The WITNESS. No.

Mr. PRATT. Not interest.

The COURT. What was the amount, please?

The WITNESS. \$312,666.51.

Q. In 1929 you received some dividends on Ecuadorian Corporation stock?—A. Yes; 31 shares.

Q. At what price?—A. \$108, and dividends on 1,178 shares of Ecuadorian Corporation ordinary stock, \$58.90, and dividends on 30,889 shares of Chrysler stock, \$23,166.75; again on March 30th dividend on 30,889 shares of Chrysler, \$23,166.75. And on May 16th dividends of 10 shares of Quito Electric Light & Power, proceeds \$14, and on 50 shares of Quito Electric Light common \$40, and on June 31, in connection with the redemption of 10 shares of Quito Electric Light & Power preferred \$200, and on June 30th dividends on 30,889 shares of Chrysler, \$23,166.75, and on July 2nd there was dividend on 5,000 shares of Ecuadorian Corporation ordinary stock, \$300, and on July 17th a cash transaction of \$5,000.

141 Q. Excuse me. Was that a transfer of cash from Innisfail to you?—A. Innisfail started to pay over its obligation to me, so it paid me \$5,000 in cash on July 17th and on July 23rd, \$100,000.

Q. Were those transactions as the result of checks drawn by you on the Innisfail Corporation?—A. Checks drawn by the corporation. I don't know whether they were drawn by me or not, but they were drawn to my credit.

On July 25th redemption of 50 shares of Quito Electric Light & Power Corporation common \$750 to their credit, and on September 30th, quarterly dividend on the Chrysler stock of \$23,166.75, and on December 6th there was a sale of 4,412 shares of Chrysler for \$145,596, and after—

Q. Excuse me.—A. Yes, sir.

Q. Where had that 4,412 shares of Chrysler been obtained?—A. Well that is part of this block of 30,889 that belonged to the corporation which it sold on that day.

Q. Those are the issues of the corporation bought from you on July 19, 1928, aren't they?—A. It was either the original block or the proceeds of the original block, because there was some preferred stock that was changed into common stock, the stock of the West Virginia Corporation to the stock of the Delaware Corporation, but it all went back to the original transaction, so that this 4,412 shares was derived from that original acquisition by the corporation of the stock that we referred to originally.

Q. On July 19, 1928, do you see a subscription of 4,412 shares of new Chrysler?—A. What is the date of that?

Q. July 19, 1928.—A. Yes. That ties in. On July 19 the corporation subscribed to \$253,690, or 4,412 shares of new Chrysler stock; and I assume that this 4,412 shares is the same thing.

Q. On the debit side you have a purchase on December 28th, 1929, a purchase of 1,000 shares of Aldebaran Corporation for \$160,800.—

A. Yes, sir.

142 Q. That is stock purchased from you, isn't that correct?—

A. Yes; I had some stock, purchased from me, and I sold it to the corporation for \$160,000 on December 28th, also had 1,900 shares of Hudson Motor which was sold on that date, December 31, for \$106,400.

Q. Purchased from you?—A. Purchased from me.

Q. And on each of those sales you reported a loss for tax purposes, did you not?—A. I think so.

The COURT. You mean in his individual return?

Mr. PRATT. In his individual return.

The WITNESS. Yes.

Q. Throughout these years beginning with June of 1926 and ending with the year 1929, to the end of 1929, you collected approximately \$300,000 in dividends from Chrysler?—A. Well, I have a receipt of all of them, giving the full details, but I can't tell you what the total was at this time.

Q. Yes. You knew, did you not, that during those years the corporation would not pay a tax on its income as a result of these dividend payments?—A. I knew that in these particular years there was no tax payable by a corporation on stock—on dividends paid by another corporation, the theory being that the first corporation—

Q. Excuse me, sir.—A. (Continuing.) Paid the tax, so that I knew that.

Q. But you, as an individual, during these years would have been compelled to pay a tax, isn't that so?—A. As an individual, I would have to pay a tax on any income.

Q. Yes.

The COURT. Specifically, the question is with reference to corporate dividends during those years, you had to pay a surtax, didn't you?

The WITNESS. Surely.

143 Q. At the end of 1929, was there a balance in your favor or in favor of the corporation, at the end of 1929?—A. At the end of 1929 the corporation owed me \$267,453.61.

Q. They owed you?—A. Yes.

Q. Or did you owe them?—A. Well, this was a balance which was carried over, and how it was carried over—no; I did not owe them.

Q. The corporation owed you?—A. Well, I take it, yes, on this side of the account \$267,453.61.

Q. They owed you that as a result of a sale of 1,000 shares of Aldebaran, and the 1,900 shares of Hudson Motors, which you made in December 1929?—A. No, that is not quite accurate, because the subtotal of these things, the two things, would be \$266,000, and this is two hundred and sixty-seven.

Q. \$267,200.—A. That is substantially it.

Q. With the exception of the \$200.—A. The real balance is the result of all these debits and credits starting from June 15, 1926, during 1927, 1928, 1929.

Q. The corporation at that time when you sold this thousand shares of Aldebaran and the 1,900 Hudson Motors had no money with which to pay you as a result of such purchase, did it?—A. I don't think so.

Q. And you sold it to them and allowed the corporation to owe you for the purchase price?—A. I gave them credit.

Q. And you received no note on it either?—A. No, no.

Q. Or charged any interest?—A. Charged no interest.

Q. In 1930 you had some dividends on Chrysler?—A. Yes.

Q. January 2nd in the amount of \$23,166.75?—A. Yes, and on April 1st, \$19,857.75, and on April 1st dividend on Hudson Motors of \$2,375.

Q. Excuse me. Is that the Hudson Motors which you sold?—A. That is the Hudson Motors which stood in my name, the property of the Aldebaran Corporation.

144 Q. And in that case the dividends went to your own personal bank account?—A. Yes, sir; I think so.

The COURT. The property of which corporation, please?

The WITNESS. I said "Aldebaran"—I beg your pardon. It was the Innisfail Corporation.

Q. And then the next one is 26,477 shares of Chrysler?—A. Yes, the amount is \$19,857.75.

Q. Then there is a sale of 10,000 shares of Chrysler at \$195,000 even, isn't there?—A. Yes, sir.

Q. On September 30, 1930?—A. Yes.

Q. At that time the Chrysler stock stood in your name, didn't it?—A. Yes, I think all during this period it stood in my name.

Q. And who purchased that stock, Mr. Smith?—A. I would have to look at the journal there.

Q. Will you look at it, please?—A. The journal entry shows that I bought that stock from Innisfail Corporation.

Q. You bought that stock?—A. Yes.

Q. And after that transaction, of course, the stock continued to stand in your name?—A. I don't recollect whether it did or whether it did not. I don't know whether I sold it. It would stand in my name unless there was some other disposition to be made of it.

Q. The end of 1930, how did the account between you and the corporation stand?—A. Well, the balance was \$22,460, evidently in its favor.

Q. In its favor?—A. Yes.

Q. And you did not execute a note to the corporation, did you?—A. No, sir.

Q. Nor did the corporation charge you any interest?—A. No, sir.

Q. During that year 1931 you continued to receive dividends on the Chrysler and Hudson Motors standing in your name, isn't that so?—A. And belonging to the corporation, sir.

Q. Excuse me. I did not get that.—A. I say I received dividends on Chrysler and Hudson stock belonging to the corporation, which stood in my name amounting to substantially \$41,000.

Q. My question is, you received the actual cash, did you not?—A. Well, I received the actual checks, the dividend checks.

Q. And deposited those checks to your bank account?—A. Yes; that is right.

Q. On the other side of the ledger, how did the account stand at the end of 1932?

The COURT. 1932 is this?

Mr. PRATT. Excuse me, your Honor. I meant to say 1931.

A. The balance carried down was \$41,777.18.

Q. And they owed you money at that time?—A. Yes.

Q. Without any notes or any interest charged?—A. I do not quite get that.

Q. Did they owe you money or did you owe them money, that is to say, the corporation?—A. Well, they owed me money at that time because we started out in 1932 with a balance brought down of \$41,777.18.

Q. Wasn't it the other way around?—A. Yes; I think you are right, because at the end of 1931 I owed them \$41,000. It is brought down as a charge against me. That is right.

Q. In 1932, on December 29th, you sold to the corporation National Banking stock, Gaynor Electric, Investrad Corporation, Firestone Corporation, Electric Auto Lite, and National Sugar Refining?—A. Yes, sir.

Q. And you received no cash from the corporation, did you?—A. I had to pay cash.

Q. You paid the balance?—A. The balance.

Q. Of \$7,000?—A. \$7,440.80, in order to square the account.

Q. That wiped out the account between you?—A. That disposed of the account, taking into consideration what had happened on the other side of 1932. The dividend on January 4th on 16,477 shares of Chrysler, \$4,000; on the 2nd day of January, a dividend on 1,900

shares of Hudson, \$475, and a transaction on May 25th of cash of \$10,000, and also a transaction on September 14th of payment on account of the purchase of 900 shares of New Haven stock for my account \$16,312.50, so that at the end of 1932 the account was even, and I take it that in the meantime because I was not receiving these dividends on Chrysler after January 4, 1932—I think I showed you a dividend order to the Chrysler Corporation to pay the dividends direct to the bank account of the corporation.

The COURT. That would be as of what time, please?

The WITNESS. Some time after the 4th of January 1932, perhaps sufficiently soon to take care of all the other quarterly dividends. There were three quarterly dividends paid on the Chrysler stock subsequent to the January dividend.

Q. Do you have a copy of the letter which you sent to Chrysler dividend disbursing agent, Mr. Smith?—A. I don't think so now, but I think the Chrysler Corporation have it.

Mr. PRATT. May I see it?

Mr. SHER. That was introduced in evidence before the Board of Tax Appeals, and if you will look in the transcript of the record you have in front of you, you will be able to find it.

147 Q. Did you execute such dividend order in connection with the 1,900 shares of Hudson Motor?—A. I am not sure, but the reason I am not so sure is that I do not know whether the Hudson Motor Company continued to pay dividends in 1932, and I think the Chrysler Corporation did, so that I haven't any recollection as to the Hudson Motor, but I should think that if I did it in one I would probably do it in the other.

The COURT. I will have to tell the jury that that is not any testimony on the subject. If you did not, we would like to know it, and if you did we would likewise prefer to know it.

The WITNESS. I can't state without having my recollection refreshed by the records, if any, Judge.

Q. Will you get before you, Mr. Smith—Mr. Doty will probably help you—the balance sheet of the Innisfail Corporation at the end of December 31, 1932?—A. Yes; I have it now.

Q. Do you see your assets of cash in bank securities? You see that, do you?—A. Yes.

Q. The amount of cash in bank is \$17,115.03?—A. That is correct.

Q. Under your investment securities you have 6,566 shares of Argonaut Consolidated Mining Company.—A. Yes.

Q. Can you tell us whether or not the Argonaut Consolidated Mining Company stock was purchased from you by the Innisfail Corporation?—A. I can't tell that without looking at the records.

Q. Have you something there to help you?—A. No; that stock was acquired according to the journal entry—from the cash book entry, pardon me, from the Farmers Loan and Trust account of B. F. Hochbaker, 5,400 shares at \$1.50 a share.

148 Q. You bought that from an individual?—A. Yes.

Q. And the corporation bought that directly?—A. Yes.

Q. That is; the corporation's check was drawn in payment of the stock?—A. Mr. Doty says the records show that it was.

Q. And when was that bought?—A. August 29th, 1928.

Q. August 29th, what year?—A. 1928.

Q. The next item in the balance sheet is 1,000 shares of Aldebaran Corporation—A. Yes.

Q. You testified that that was bought from you.—A. Yes.

Q. And that you took a loss on that sale in your tax return for that year?—A. Yes, sir.

Q. The 500 shares of Bondshares Fiscal Corporation for \$5,000.—A. They did not buy the stock from me. They bought it from Mr. Carlisle.

Q. They paid Mr. Carlisle in cash?—A. Yes.

Q. Did you advance the funds?—A. No.

Q. The next, 16,470 shares of Chrysler Corporation that they carry here at \$524,234.32, that is part of the original lot?—A. Yes; that is part of the original lot, transferred back. That came out of the original transaction.

Q. That was back in 1926?—A. Yes.

Q. That is part of the stock which you turned over to Chrysler?—

A. Yes, sir; the proceeds of that stock.

The COURT. Turned over to Innisfail.

Q. Turned over to Innisfail and received in exchange—A. The stock of Innisfail Corporation.

Q. The stock of Innisfail Corporation?—A. Yes; not this precise stock, but some other stock, and this came through my exchange, and so forth.

Q. Yes. You had disposed of that 16,477 shares and you had originally 26,477 shares?—A. Yes; because as we testified before there was a sale there.

149 Q. To you of 10,000 shares?—A. Yes.

Q. The Ecuadorian Corporation, Ltd. stock, that is, the ordinary and the preferred, having a value as of this date \$31,302.62. Will you tell us whether or not the corporation bought that stock from you or whether it bought it from some one else?—A. My impression is it bought it from me, but I would like to have it confirmed by the records.

Mr. Doty tells me that I am not correct. That part of it was bought from me and part of it was bought from somebody else. Mr. Doty informs me that I bought for their account 4,999 shares for \$15,000, and the balance was conveyed by me direct to the corporation.

Q. A part of it?—A. A part of it was sold from me to the corporation, and the rest of it was a sale by an outsider whose name I do not recall at this time.

Q. The 5,000 shares of Electric Lite—Electric Auto Lite for \$9,000—A. 500 shares, isn't it?

Q. Excuse me, 500 shares. Innisfail Corporation purchased that from you at the end of 1932?—A. That is right.

Q. And the same is true of the 500 shares of Firestone Rubber carried at \$6,500?—A. Yes.

Q. Also the 332 shares of Gaynor Electric?—A. Yes, sir.

Q. Carried at \$3,320?—A. Yes.

Q. And the 1,553 shares of Investrad Corporation carried at \$6,789.80?—A. That is right.

Q. And the 18,324 shares of National Baking stock for \$18,324?—A. That is correct.

Q. And the 800 shares of National Sugar for 16,900?—A. Yes, sir.

Q. Those that I have just read, beginning with the Electric Auto Lite and the National Sugar, is that block of stock which you sold in December of 1932 to the corporation?—A. That is correct.

Q. Mr. Smith—A. There are some more assets.

150 Q. Excuse me. You have the 645 shares of White Knob Copper & Development Company, preferred, carried on the books at—A. 105 shares, at \$399.

Q. Were those securities bought from you or bought direct?—A. I would have to look at the record and have my recollection refreshed. Mr. Doty tells me they were not bought from me.

Q. But bought direct?—A. Yes.

Q. At the end of December, 1932, Innisfail Corporation had securities which were carried at a value of \$791,751.92, and of that amount all the securities were either transferred to Innisfail Corporation by you or bought from you with the exception of approximately \$30,000 worth, isn't that so?—A. Well, whatever the amount is, we stated them in detail. I can't recollect.

Q. There is Argonaut 8,900, Bondshares 5,000—

Mr. SHER. I object to this as argumentative and repetitions, your Honor.

The COURT. Objection overruled.

Mr. SHER. Exception.

The WITNESS. Whatever the amount is.

Q. You can calculate the shares, 8,900 Argonaut, 5,000 Bondshares, about half of the Ecuadorian, and then—A. I can't go along with those figures in my head. I am not as good as that, but it is perfectly plain that the big items are the Chrysler and the Aldebaran shares, the two items. There are only—there can't be very much more outside of the others.

Q. During the period between 1926 or commencing in 1926, and before the end of, 1932, Innisfail Corporation declared a dividend, didn't it?—A. No, I have to look at the records there.

Q. I direct your attention to January 31, 1928.—A. What is that date again?

151 Q. December 31 I should have said. December 31, 1928, do you see an item of \$70,000?—A. Wait a minute, now. Yes, sir, declared a dividend of \$700 a share payable December 31, 1928, to stockholders of record on December 30, 1928.

Q. Was that a cash dividend?—A. It doesn't say here, but I assume that it was.

Q. Can you refer to anything?—A. Well, it was a cash—yes, it was a cash entry, and it came to me as a credit for that amount of \$700 a share on the shares that I had.

Q. Innisfail Corporation did not draw a check to your order for \$70,000, did it?—A. No, I do not believe they did, but what they did was to get a credit for the \$700 a share.

Q. My question is, they did not draw a check to your order for the dividends?—A. I can't tell that. Mr. Doty said it did.

Q. Do you establish Mr. Doty's answer as your own?—A. Yes, I have already done it. I said yes, sir.

Q. Excuse me. Did you suggest to your directors that the dividend be at the rate of \$700 a share?—A. Well, I think I must have, although I haven't any recollection of it, because I think that the question of the amount was considered and canvassed, and finally agreed at \$700.

Q. As a matter of fact, you could have declared the dividend in any amount which you chose?—A. No, there were limits on it.

Q. You owned all the stock.—A. That doesn't make any difference. You can't declare dividends at will simply because you own all the stock.

Q. You could have declared a dividend payable on any of the securities of the Innisfail Corporation?—A. But the corporation had a perfect right to declare as a dividend under its law out of the surplus or earnings whatever they thought it prudent and fair.

Q. They could have declared a dividend in spite of the \$70,000 in cash, and they could have \$70,000 worth of securities at that time, couldn't they?—A. Well, I think that would have been quite within their power.

Q. There was nobody with you who had all these years put any money into the Innisfail Corporation, was there? Yes or no, please.—A. I made the original contribution and everything has come out of that except from time to time I have advanced moneys to the corporation.

Q. And nobody would take any money out of the corporation except yourself?—A. Oh, yes. For example, I had not had anything to do with the corporation, as I sold my stock.

Q. We are talking about the years between 1926 and 1932.—A. That is, until I sold my stock, I was the only one that put any money in the corporation and I was the only one that got anything out.

Q. Did Innisfail Corporation ever have any bank loans during the period beginning in June of 1926, and ending December of 1932, Mr. Smith?—A. I would have to look at the records there.

Mr. Doty informs me that they had money out on call. That is not what he is asking about. He wants to know if we had a loan? No, we loaned money, but we did not borrow. I think the answer is no bank loans.

Mr. PRATT. May I ask that answer be stricken out, as not responsive, your Honor?

The COURT. I think the complete answer is responsive.

The WITNESS. The answer, your Honor, is that there were no bank loans.

Q. Did you yourself during this period have bank loans on which you were personally liable?—A. Which period is this?

Q. Say, during the years 1926 to 1932.—A. I think that during the last part of that time I was a borrower of money and personally liable.

Q. Those were on collateral loans, weren't they?—A. By and large from what Mrs. Smith's collateral was, I say it is partly true.

Q. In April of 1932, Mr. Smith, will you tell us what collateral loans you had outstanding?—A. I can if my recollection is refreshed by producing the records.

Q. Yes; will you please refresh it?—A. Well, the ledger shows, and the fact was as of January 1, 1932, I owed the Chemical Bank and Trust Company \$300,000.

Q. Was that your only bank loan at the time?—A. No; I think there was one with the Chase. Beginning 1932 I owed Chase \$300,000.

Q. Will you tell us what securities you had up with the Chemical Bank as collateral in April 1932?—A. Would you mind if I gave you the Chase securities first, because—

Q. Not at all.—A. I have it right here.

Q. All right. Will you please give us Chase, then.—A. To save turning back. Well, we started out with 10,000 shares of General Motors as Chase collateral, and then we put up an additional 2,000 shares of Anaconda.

Q. When was that, Mr. Smith?—A. No; I am wrong. Mr. Dory informs me that was in '30, not '32.

Q. Could we restrict it to April from your records?—A. I think we can if we do a little computing here. There was additional collateral of 2,000 shares of Anaconda, 2,000 shares of Industrial Rayon. This is changing from time to time.

Q. Was that how it stood in April 1932?—A. Yes; I think that is probably correct, in April 1932.

Q. Can you tell us how your loan at the—A. Then, also the record shows that prior to that we put up that additional amount of 10,000 shares of General Motors.

154 The COURT. That is, making 20,000 in all?

The WITNESS. 20,000 General Motors.

Q. In April of 1932?—A. Yes.

Q. At the Chemical Bank you had a loan of \$250,000 in April of 1932?—A. Yes.

Q. Will you tell us what the collateral was with the Chemical?—A. Started off with 5,000 shares of Chrysler, 5,000 shares of General Motors, and then later on we put up 6,000 shares of Chrysler.

Q. Excuse me. When you say "started off" was that in April 1932?—A. No; this was in 1930. These loans go back to '30. Then, there was 1,500 shares of General Motors Management and on December 22, 1931, 10,000 shares of General Motors common put up additional. In April, 5,000 additional shares of General Motors common.

Q. Then how would it stand in April of 1932?—A. Well, in April there is 10,000 shares of Chrysler, 20,000 shares of General Motors, 1,500 shares of General Management Corporation. That was the collateral.

Q. Excuse me. Did you say 20,000 General Motors and 10,000 Chrysler?—A. Now, wait a minute. Mr. Doty explains that in April it was 10,000 shares Chrysler, 20,000 shares General Motors, 1,500 shares of General Motors Management, and then in the latter part of April put up—in May, the 31st of May, put up as additional collateral 10,000 shares of Chrysler.

Q. From your records can you tell what your total holdings in General Motors stock was in April of 1932, your own personal holdings?

Mr. SHER. Oh, I object to that as irrelevant.

A. I will have to figure it out.

Mr. SHER. I have been letting this testimony go in, but I do not see the bearing of any of it, and it has no relevancy to the matter under discussion and is only going to prolong it.

The COURT. What is the purpose?

Mr. PRATT. I want to see whether any powers of hypothecation with respect to the pledging of the General Motors stock was necessary, whether it was his own General Motors stock which was collateral to the loan, or someone else's.

The COURT. If I could only follow you I would not have any difficulty in making the ruling. I do not now understand what your purpose is. You have the details of two collateral loans.

Mr. PRATT. Yes.

The COURT. One by Chase and one with Chemical.

Mr. PRATT. There is a question in the case as to the proof of the ownership of certain securities. Innisfail is supposed to own securities. If he took the securities of Innisfail—of course, I don't know—and pledged those for his personal loan—

The COURT. I think there is a very adequate way to get at that. Ask what the certificate numbers were of the General Motors certificates alleged to have been the property of the Innisfail Corporation and the stock certificate numbers of General Motors stock in either of these loans.

Mr. PRATT. Probably I will withdraw the question as to General Motors.

Q. We will talk about Chrysler which is in a much smaller volume. Can you tell from your records how many shares of Chrysler stock you yourself owned in April of 1932?—A. I think so.

Mr. SHER. I make the same objection to that, your Honor. He does not have to go into that in order to determine whether
156 Mr. Smith was pledging Innisfail stock or whether he was pledging his own stock.

The COURT. Have we on January 1, 1932, any Chrysler stock in the Innisfail Corporation?

Mr. PRATT. Yes.

The COURT. Yes. We have 16,477 shares, haven't we?

Mr. PRATT. Yes, your Honor.

The COURT. I presume the record will indicate the certificate numbers of that stock, and I think it would be proper to ask at this time what those certificate numbers are.

Mr. PRATT. Yes.

Q. Will you, Mr. Smith, tell me what the certificate numbers were of the Chrysler stock that were owned by Innisfail Corporation?—

A. If we have any record of it I will be glad to give it.

Q. Say in April 1932, can you tell me the certificate numbers of 2,000 shares of Industrial Rayon that were put up as collateral with Chase in April 1932?

The COURT. Was there any Industrial Rayon said to be held by the Innisfail Corporation at that time?

Mr. PRATT. No; but there was Industrial Rayon that was sold to Mary A. Smith in 1931.

The COURT. Will you get at one thing at a time and we will make much better progress?

Q. With the Chrysler, have you that information?—A. I haven't it here.

The COURT. Can you tell us what certificate numbers represented the stock covered by the Chemical loan?

157 The WITNESS. I think the original 5,000 shares of Chrysler were certificate C27959 and 983 for 2,500, and C277998.

Mr. PRATT. A little slower, please.

The WITNESS (Continuing). 277998 to 280022 for 2,500, and additional Chrysler, 6,000 shares, C1116709 and 80 for 200 shares, and C1116054 to 7 and 8 for 2,500 shares; C1116029 to 53, 2,500 shares; C1116004 to 11, 800 shares; in May 1932, additional collateral 10,000 shares of Chrysler, and the certificate numbers are not listed here, but they would be on the other record that I was speaking of.

Q. The other records that you do not have here?—A. Not here.

Q. Mr. Smith, did you ever pledge any stock for which you were the nominee, according to your testimony, in any of your personal loans?—A. Not to my knowledge. I had a lot of Chrysler stock of my own. This Chrysler stock we are talking about is my own Chrysler stock.

Q. Will you tell us how many shares of Chrysler you owned in April 1932?—A. Yes; I think I can tell you that. I owned 23,787 shares of Chrysler in my own right in 1932 plus—in other words, I owned 25,477 shares of Chrysler in my own right.

Q. You owned 25,477 shares of Chrysler in your own right?—A. Yes. That is in addition to stock owned by the Aldebaran Company, or, pardon me, I say "Aldebaran," I am talking about Innisfail.

Q. Then, Innisfail owned in its own right 16,477 shares?—A. Yes; I think that is it, and I owned 25,000.

Q. So between yourself and Innisfail you owned 42,954 shares of Chrysler?

Mr. SHER. To whom do you refer?

Q. In April 1932, is that correct?

158 The COURT. The proper form of the question is, the sum of those two units is so and so, which is a mere problem in addition.

Q. Do I understand you to say that you have not the information available as to certificate numbers on the Chrysler stock?—A. I understand I have it. Mr. Doty says that particular thing in regard to the 10,000 shares, the records of it are not here, but they are not available, he said, because—he said they are not available, with us.

Mr. PRATT. May I ask the plaintiff to produce the certificate numbers of the Chrysler stock owned by Mr. Smith, according to his testimony, in April of 1932, in the aggregate of 20,477 shares, and 25,477 shares—

Mr. SHER. Now, which is it?

Mr. PRATT. 25,477 shares, I should have said, and the certificate numbers owned by Innisfail Corporation.

Mr. SHER. Yes.

Mr. PRATT. Owned by Innisfail Corporation of 16,477 shares.

Mr. SHER. I will be very glad to give you those if we have them. I understand we have the records available, but not here in court.

Q. In April of 1932, that is, Mr. Smith.—A. Yes.

Q. Do you have the certificate numbers of the 2,000 shares of Industrial Rayon that was up for collateral at the Chase National Bank in April of 1932?—A. We will look at the records and see. Yes; the certificate numbers are N3097 to 3100 for 400 shares.

Q. Just a moment. N3097 to 3100?—A. Yes; for 400 shares; 159 N3145 to 3160 for 1,600 shares. That stock was taken out in December 1931 and 2,000 shares of General Motors was substituted for it.

Q. I am asking you, through Mr. Doty, what Rayon you owned in April of 1932, which was collateral for the loan at the Chase.—A. It wasn't at the Chase at that time.

Q. Not at the Chase at that time?—A. No.

Q. And you say that there were substituted for that 2,000 Industrial Rayon, 2,000 General Motors?—A. Mr. Doty says the record shows that.

Q. Will you let me have the certificate numbers of the 2,000 General Motors?—A. D5341 to 5360.

Q. D5341 to 5360?—A. Yes.

Q. That would be 20 certificates, at 100 each?—A. 100 shares each, yes.

Q. 20 certificates at a hundred each?—A. Yes.

Q. Where was the office of the Innisfail Corporation? Was it in New York City, Mr. Smith?—A. With my office.

Q. In with your office?—A. Yes.

Q. Where were its books kept; in your office?—A. Yes.

Q. And did the Innisfail Corporation pay any rent?—A. No.

Q. It had no employees that were wholly paid by it, did it?—A. Oh, yes; I think that Mr. Doty got paid.

Q. Wholly paid?—A. What?

Q. Any employees who gave their full time?—A. Nobody gave his full time. That is, the clerical work of running the books and so forth, that was the only—

Q. To keep the books?—A. To keep the books; yes.

Q. It is true, isn't it, that you initiated all of the policies with respect to investment and conduct of the business generally of the Innisfail Corporation, isn't that so?

Mr. SHER. I object to that as calling for a conclusion. He should ask the witness what he did.

160 The COURT. Yes. I think that would be a better question.

Q. If you chose to buy securities, Mr. Smith, you bought securities for Innisfail, didn't you?—A. I think the corporation was run by the board of directors and I was a director, and I think I had—

Q. Excuse me.—A. Pardon me.

Q. I do not want to be offensive, but I just want to elicit certain answers to my question.

Mr. SHER. You have to let him finish, even though the answer is not to your liking.

Mr. PRATT. I do not know about it not being to my liking. If you cannot answer the question just say that you can't.

Will you restate the question?

Q. (Read.)

Mr. PRATT. I move to strike out the answer and ask that the witness be instructed to answer the question.

Mr. SHER. I think that is an answer, your Honor.

The COURT. No; I agree with the attorney for the defendant that it is not a responsive answer. The question may be poorly worded, however. I will ask a few questions on that subject myself.

By the COURT:

Q. In the event of a purchase of securities for the Innisfail Corporation, who decided on the prices to be paid and who decided that the immediate purchase should be made?—A. The board of directors had the responsibility of making decisions.

161 Q. How often did the board of directors meet?—A. Well, not so often. They did not meet so often formally but informally these things were discussed from time to time.

Q. Did they meet every time stock was purchased?—A. Either before or after.

Q. They met after?—A. It would depend on them whether it was important or not important. It was not—each particular thing was presented to the board of directors but the general supervision of the corporation was laid in the board of directors.

Q. That is a matter of law, but what I want to know is what happened in the event that the board of directors met after the purchases of stock were made.—A. A report was made in regard to it and the matter was discussed as to what was done in making the purchase, and it was approved if it was satisfactory.

Q. Did you ever know of a case where the action of the president in purchasing the stock was not ratified by the board?—A. No, I think those transactions of the president were ratified in each case by the board.

By Mr. PRAFT:

Q. So there was never a dissenting voice recorded in the minutes, was there?—A. I don't believe so. I don't believe there was anything to dissent from by the directors.

Q. Did any other officer of the Innisfail Corporation other than yourself transact any business in behalf of the Innisfail Corporation?—A. Oh, the secretarial business, the transfer of certificates and all that was the chief business of the corporation and that was not done by me at all.

Q. That, of course, was the business of the corporation and that is the business that was done in June of 1926, to get the corporation into existence?—A. No. That was the whole conduct of its affairs in all the years of its existence.

162 Q. Did any officer of the corporation other than yourself ever sell or buy securities?—A. For the corporation?

Q. For the corporation.—A. No, I don't believe they did.

Q. Did anybody other than yourself contribute any capital funds or make any advances?—A. I have already answered that question.

Q. Now, at times you were indebted to Innisfail Corporation during the period from 1926 to the end of 1932?—A. That is true.

Q. Was there any authorization by the board of directors recorded in the minutes in which authority for such indebtedness was permitted to exist?

Mr. SHER. I object to that as not the best evidence. The minutes are in evidence in the record and they are available. I don't see that we will get any place by asking the witness oral questions of the period ten years ago as to whether the minutes provided for something when the minutes are certainly the best evidence.

The COURT. Let us analyze your objection. If I can subtract 26 from 32, instead of being 10, it is 6.

Mr. SHER. He is going back to 1926.

The COURT. The case before the Court involves the year 1932. So, that is only six years ago. I think it is quite competent in trying

to develop the practice for the District Attorney to ask whether when the corporation was about to lend money to this witness any corporate action on that occasion was taken. If that is the question I will allow it and overrule the objection.

Mr. PRATT. That is the question.

Mr. SHER. I think the question calls for an answer as to whether there was anything in the minutes approving of it.

163 The COURT. The witness can say whether he knows of anything in the minutes. Probably, he is familiar with the minutes.

The WITNESS. No, Judge, I am not familiar with the minutes.

Mr. SHER. Exception.

The COURT. All right. Then, ask your question on the basis that I suggested as to what the corporate practice was.

Q. Was it the corporate practice, Mr. Smith, for you to obtain permission—

The COURT. No, please. I gave you a simple question. When the corporation was about to lend money to you, was there any corporate action taken authorizing the loan?

The WITNESS. I don't believe so. I do not believe there was any formal meeting to discuss the thing. The situation of the corporate affairs or the corporation's affairs was known by all the officers and directors and it was approved by them as satisfactory, but this was not a corporation that was formally run as some railroad corporation, or something like that. It was an informal corporation.

The COURT. In other words, the answer is no.

The WITNESS. I think so, yes.

The COURT. So do I.

Q. As a matter of fact, you could sell securities of Innisfail at any time or in any manner which you yourself thought best, isn't that so?

Mr. SHER. I object to the form of that question, as to whether he could.

The COURT. Yes.

164 Mr. SHER. What he did is what we are interested in.

The COURT. I think the objection is sound and it will be sustained.

Q. Do you know whether or not the board of directors, Mr. Smith, ever conferred upon you the power to sell securities of Innisfail Corporation at any time and in any manner you chose?

Mr. SHER. Same objection, your Honor.

Mr. PRATT. He can state whether he knows.

The COURT. Objection overruled.

Mr. SHER. Exception:

A. I do not think there was any specific having or voting of any such power. I think it was part of the power of the president authorized by the by-laws and by the practice of the business.

Q. I am going to read, Mr. Smith, from page 63 of Plaintiff's Exhibit 20 in Evidence, a resolution of your board of directors at a

meeting held on November 28, 1929, and see if your recollection is refreshed with respect to your answer to the previous question:

"The chairman stated"—the chairman was yourself, Mr. Smith?—
A. Yes.

Q. (Continuing.) "The chairman stated that it may be necessary from time to time to sell some of the securities of the corporation, and upon motion duly made and seconded and unanimously carried, it was resolved that the president of this corporation be and he hereby is authorized to sell any and all of the securities owned by this corporation at such time and upon such prices, terms, and conditions as he may see fit.

Is that so?—A. Yes, I think that is so. There was such a resolution adopted.

165 Q. In 1932 or at any time prior thereto, going all the way back to the date of its incorporation, did the corporation have its own stationery on which it would correspond in the conduct of its business?—A. No; I think not.

Q. If any letters of the corporation were needed, would your own stationery be used?—A. Probably blank stationery in the name of the corporation.

Q. It did not have its own letterheads?—A. No.

Q. Did it have any telephone listed in its name?—A. It did not.

Q. You stated on your direct examination, Mr. Smith, that as a matter of convenience you kept the original block of 26,477 shares of Chrysler in your own name. Do you recall that?—A. Well, I was the nominee of the corporation.

Q. You were the nominee?—A. Yes.

Q. And you gave us your reason that transfer agents sometime require or always require that a resolution of the board of directors accompany a corporate endorsement of the stock, isn't that so? Wasn't your answer to that effect?—A. I testified to that effect.

Q. Yes.—A. As being the transfer practice; yes; it was a transfer of stock out of the name of the nominee.

Q. These directors of your corporation were your subordinates who were working with you at the office at 1775 Broadway?—A. That is correct.

Q. In the case of these sales to Mrs. Smith in 1931, you sold that stock in order to establish tax losses, is that correct?

Mr. SHER. I want to renew my objection again to that line of questioning that was started yesterday.

The Court. Same ruling.

Mr. SHER. Exception.

166 Q. Isn't that correct?—A. Now, there is one other thought that entered into the consideration of that that I had in mind.

Q. All right. In connection with your sale of the 1,900 shares of Aldebaran and the 1,900 shares of Hudson Motors, you sold that stock to establish tax losses?—A. Partly that, and also to pay off my obligation to the corporation.

Q. Wouldn't you sit down and calculate the tax you would ordinarily have to pay and then select from your securities a list of those on which you had a loss, and then you would effect the transfer of those particular securities in order to reduce your income tax?—A. No.

Mr. SHER. I want to urge again my objection to injecting the 1931 tax here in this case.

The COURT. I am in entire sympathy with your views. I will grant that we are not trying the 1931 tax case, but certain incidents seem to be common to the tax question, and if that be so, and it is so, reasonable inquiry with regard to the first is permissible for the purpose of establishing the question of intent. However, the witness has answered that question before you spoke and said, "No," so I understand there is no objection to it.

Mr. SHER. Did he make that answer?

The WITNESS. No; and if I did I certainly did not intend to.

The COURT. Perhaps my hearing is not so good. I thought he answered "no."

Q. Do you want to correct that answer, Mr. Smith?—A. I would like to hear the question again if I may.

(Question read.)

Mr. SHER. I object to that, your Honor.

The COURT. The objection is overruled.

167 Q. Is your answer yes or no, Mr. Smith?—A. I do not want to make a yes or no answer to that because I can't state the proper—tell the thing adequately yes or no.

Q. Well, there were securities on which you had paper losses at the time?—A. Paper losses? No.

Q. Until you sold them you had a paper loss?—A. No, you do not have any loss at all.

Q. Don't you call that in the vernacular a paper loss?—A. No, I do not call it a paper loss.

Q. They were securities on which if sold by you at that time would have produced cash in an amount less than you had originally paid for such securities, isn't that true?—A. That is true.

Q. Didn't you select that type of securities and effect a transfer to Innisfail Corporation in 1932?—A. Well, you mean, as between certain stocks and other stocks I picked these rather than the others, of course. I picked these particular stocks.

Q. And it was because you had a loss on them?—A. That was one of the reasons. It was not the only—

Q. Didn't you?—A. (Continuing.) Reason.

The COURT. Let the witness finish his answer, please.

The WITNESS. The reason is this—

Mr. PRATT. Your Honor, I object.

The COURT. You asked for the operation of the witness's mind, and you are going to get it.

Mr. PRATT. All right.

The WITNESS. I never bought a share of stock without considering the tax incident. There are a lot of stocks I can't afford to buy because of that, and I never sold a share of stock without considering how it is going to affect my taxation position, because there are a lot of securities that I can't afford to sell because of the tax incident, and, therefore, never once do I fail to take into consideration how it is going to affect my question of tax, whether it is a gain or a loss, or whether I could sell or afford to sell this security and I can't afford to sell that security. That goes to every particular sale.

Q. Aren't you finished, Mr. Smith?—A. I am done.

Mr. PRATT. No further questions.

169 Redirect examination by Mr. SHER:

Q. Mr. Smith, you testified that you were the president of the Innisfail Corporation.—A. Yes, sir.

Q. And in that capacity you bought securities for Innisfail Corporation?—A. Yes, sir.

170 Q. And sold securities for Innisfail Corporation?—A. That is correct.

Q. Have you ever been the president of any other corporation?—A. Yes.

Mr. PRATT. I object to that as immaterial, your Honor. What difference does that make?

Mr. SHER. It makes a lot of difference if the plaintiff used the same practice.

The COURT. Please. Your objection is overruled.

The WITNESS. Yes. I have been president of many corporations.

Q. Can you name some of them?—A. Yes. I am president of the White Knob Copper & Development Company; president of the Argonaut Consolidated Mining Company; I am the president of the Argonaut Mining Company; president of the General Motors Management Corporation, and I am an officer of the National Baking Company. I am an officer—

The COURT. You were asked of what corporations you were the president of, please.

A. (Continuing.) And I was president of the 1115 Fifth Avenue Corporation. I think that is about all the corporations I am president of.

Q. Were you the sole stockholder in any of these corporations?—

A. No, I don't think so.

Q. Were you a minority stockholder in any of those corporations?—A. I owned stock in them all, and in most of them an important stockholder interest.

Q. Have you ever bought securities for any of these corporations?—A. Yes.

Mr. PRATT. I object to that, if your Honor please.

171 Q. In the same manner?

Mr. PRATT. I object.

The COURT. I will allow it.

Mr. PRATT. Exception.

The WITNESS. Yes.

Q. Have you ever sold stock for any of these corporations?—A. Yes.

Q. Did you handle the purchases and sales of securities for those corporations any differently from the way you handled the purchases and sales of securities for Innisfail Corporation?

Mr. PRATT. I object to the form of that question, if your Honor please.

The COURT. Sustained.

Mr. SHER. Exception.

The COURT. You realize that you are asking him to characterize what he did and not state what he did in your question.

Mr. SHER. Yes, your Honor. However, I think it was answered sufficiently.

Q. Mr. Smith, do you recall being questioned by Mr. Pratt about whether or not you executed any written instrument or memorandum at the time you transferred the original Chrysler stock to Innisfail Corporation when you organized the Innisfail Corporation? Do you remember Mr. Pratt's question to you about that?—A. Yes.

Q. Whether there was anything in writing?—A. Yes.

Mr. SHER. If the Court please, I would like to read to the jury from the minute book of Innisfail Corporation, this document which is attached:

172 "Know all men by these presents, that I, John T. Smith, of the City, County, State of New York, party of the first part, in consideration of the sum of \$10 and other valuable consideration to me in hand paid by Innisfail Corporation, a corporation of New Jersey, party of the second part, have sold, assigned, transferred, and set over, and by these presents do hereby sell, assign, and set over, all my right, title, and interest, in and to 5,005 shares of the preferred stock of Chrysler Corporation, represented by stock certificates numbered 674-697, TP040, TP054, TP055, deposited, with Frank Basset under the terms of the agreement between the first party and said party of the second part dated June 20, 1925, under the right of the first party to exercise the option granted to him pursuant to the terms of said agreement, to exchange the said 5,005 shares of the preferred stock of Chrysler Corporation for 26,477 shares of the common stock of said Chrysler Corporation, to have and hold the same property for its own proper use and forever. In witness whereof, the party of the first part has caused these presents to be executed this 14th day of June 1926, in the City of New York. Signed, John T. Smith."

And I also call attention to the transfer stamps on this.

Q. Mr. Smith, did you believe as a lawyer that you had a right to sell stock to your wife and take a tax loss for it?—A. I most certainly did.

Q. Did you believe as a lawyer that you had a right to sell stock to a corporation in which you were the sole stockholder and take a tax loss on it?—A. I did.

Q. How did you arrive at that belief?—A. Well, that is based upon my knowledge as a lawyer that there is nothing in the law of the State of New York, and there has not been since 1846, 173 which interferes with the right of a husband to buy from or sell to his wife. That is an elementary law, I think, in regard to the State of New York. Similarly, in regard to a corporation wholly owned, as that is an entirely separate legal entity subject to its liability in itself.

I believed then and I believe now that I had a perfect right to buy from or to sell to her, the same as anybody else, and I am further confirmed in my belief that since this particular time the law itself, the Federal law has been changed and it is now provided specifically by law that a husband or wife cannot take a loss on such a transaction as was involved here, and the taxpayer cannot take a loss in transacting the business with a corporation such as this here, sort of what you call a personal holding corporation, and that law was only passed in 1934, which was several years after the transactions of the—that are involved. I not only believed at that time, but I believe now that I had a perfect right. Those transactions were perfectly valid.

Q. Mr. Smith, have you ever had your books audited?—A. Oh, yes.

Q. By whom?—A. By certified public accountants, Barrow, Wade & Guthrie. I have my records examined from time to time, my own and the corporation's that I am interested in, by certified public accountants.

Q. And have your books been audited for the periods covered in this case and about which you have testified about?—A. Oh, yes; all been audited.

Q. Do you have the transcript of the account, Mr. Smith, about which you were testifying, with relation to the transactions with Innisfail Corporation?—A. No; I haven't got that.

Mr. PRATT. Mr. Doty has it.

The WITNESS. I think that was in the minute book of the—

174 Mr. SHER. I mean the transactions between Mr. Smith and the Innisfail Corporation, the transcript.

Mr. PRATT. He was testifying from this [handing to Mr. Sher].

Q. Is that the transcript from which you were testifying, Mr. Smith?—A. Yes; this is the transcript of the account of the Innisfail Corporation.

Mr. SHER. If your Honor please, the plaintiff offers in evidence transcript of the account with Innisfail Corporation on the books of John Thomas Smith, the paper from which Mr. Smith was testifying in cross-examination by Mr. Pratt.

Mr. PRATT. And I renew my objection, if your Honor please, as to the introduction of that in evidence. We are seeking here to

prove contractual relationships. These are entries in his own personal records, bound to be self-serving, and there does not seem to be any rule of evidence under which they become competent, and I object to their being introduced. I permitted him to use that to refresh his recollection because independently he could not testify, and he was permitted to refresh his recollection from any record that he had in his possession.

The COURT. Let us see what your real objection is. In the first place, have you any objection to this transcript on the ground that it is not an accurate transcript of the books of the Innisfail Corporation?

Mr. PRATT. No.

The COURT. Very good. In the second place, do you object on the ground that anything on the part of the Innisfail Corporation can constitute a self-serving declaration on the part of this plaintiff?

175 Mr. PRATT. Excuse me, if your Honor please. That is not a transcript of Innisfail's records. That is a transcript of John T. Smith's personal records, the account of Innisfail, on the books of Mr. Smith, if your Honor please.

The COURT. Very good. Then, your objection is that this plaintiff may not maintain books, that there is some prohibition resting upon him?

Mr. PRATT. No, sir. He has a perfect right to keep books, but he has not the right to prove a contract from anything that he has in his books; because he is not a gentleman who conducts the business, and the entry itself would not be permissible on the ground that it was an entry made in the course of business.

The COURT. I do not understand that this is offered for the purpose of proving or disproving a contract. This is offered, for the purpose of showing details of transactions concerning which the witness has been examined and cross-examined, and it is a memorandum that he used in connection with giving his testimony.

Mr. PRATT. If it be introduced with the stipulation that it is not evidence tending to prove the contractual relationship existing between Innisfail Corporation on the part of Mr. Smith, or between Mr. Smith and Mrs. Smith, why the Government has no objection to its introduction.

The COURT. I am a little bit at a loss to follow you. I do not know what is asserted with reference to a contractual relationship. Have you reference to purchases and sales of securities?

Mr. PRATT. Yes, your Honor, the vendor and vendee, and also the debtor and creditor relationship.

176 The COURT. I will instruct the jury that the mere use of the words "debtor and creditor" by the plaintiff in his questions or in his argument is not binding upon them, that they can consider that the relation of a debtor and creditor existed, as the entire evidence in the case, and similarly that they can find for themselves whether there were in fact and in good faith sales of

securities by the plaintiff to his wife in the one case and to the corporation in the other, and that the mere form of these records is not to be accepted by them as conclusive on that subject. But it seems to me that that being clarified, and I hope it is in the minds of the jury, it seems to me that the witness's accounts may be laid before the jury for what they are worth, unless you are prepared to show that this transcript is not an accurate transcript of the books of account, and it is news to me that an individual may not keep books of account.

Mr. PRATT. Oh, he may, your Honor, but the point is—

The COURT. Just a moment. That is a brand new proposition to me and I do not see how a man can pay his income taxes unless he does keep books of account.

Mr. PRATT. Here is the objection, and I will try to make myself more clear: for instance, if I sought to prove that John Brown owed me a hundred dollars, would the fact that in my books I had advanced to John Brown an entry "had advanced to John Brown \$100" be evidence of any contract between myself and John Brown?

The COURT. It would be evidence of your dealings with John Brown under the shop book rule entry which has existed for a great many more years than you and I are familiar with.

177. Mr. PRATT. But under this shop book rule, for instance, this does not come into that category. He himself did not make that transcript. This transcript, after all, is a copy of entries that are already in the book.

The COURT. Well, I asked you a few minutes ago if you questioned the authenticity of this paper, and I include in that the accuracy of the entries.

Mr. PRATT. I don't. I shall disagree, with all respect to your Honor, as to the applicability of the shop book rule.

The COURT. You asked me whether in a given concrete transaction a book would be admissible in evidence and I told you it would. Whether that is close or remote from what we are talking about is another thing. I want to be sure that I fully understand your objection. That is all.

Mr. PRATT. My objection was that it should not be accepted as evidence of anything tending to prove the contract or any legal step in the chain of evidence, or any legal link in the chain of evidence that might tend to prove such contract or contracts.

The COURT. I am instructing the jury that the entries upon that transcript are not to be regarded by them as conclusive upon the question of sales of stock for tax loss purposes, but I am admitting it in evidence because I think it is a competent part of the plaintiffs' proof. Therefore, the objection is overruled.

Mr. PRATT. Exception, please.

(Marked "Plaintiffs' Exhibit No. 23.")

Mr. SHER. In other words, if I might presume to expand, if your Honor please, although this record is not conclusive, yet it is some evidence of the transactions.

178 Mr. PRATT. I object to any expansion by Mr. Sher, if your Honor please.

The COURT. I think the jury understand. It is not evidence of the transactions; it is evidence that the plaintiff kept a record and this is the record. The fact that he kept a record is not proof in and of itself that he did certain things. He might have kept a record in which he discovered the North Pole, but that would not prove that he did it.

Mr. SHER. If your Honor please, I most respectfully except to that part of it. I think that books of account are certainly some evidence of the transactions which they describe.

The COURT. This is not strictly a book of account. I guess you understand that.

Mr. SHER. It is a transcript from the ledger, your Honor, and as long as there is no objection to its authenticity, then it is the ledger which we are offering, and that certainly is evidence of a transaction.

The COURT. You just except to any instructions to the jury that you do not approve of and that will preserve your client's rights, and we will pass on.

Mr. SHER. That is the only reason I made that suggestion, your Honor.

The COURT. Very good.

Q. Just one more question: Mr. Smith. Do you remember Mr. Pratt asked you whether you took 200 shares of Industrial Rayon out of the hands of the Chase National Bank in which it was lodged as collateral in December 1931? Do you remember that?—A. I remember there was some question about 2,100 shares of Industrial Rayon. I am not clear as to the data that you refer to, because we talked about a lot of dates there on that collateral in regard to that Chase loan.

179 Q. Do you remember why you withdrew 2,000 shares of Industrial Rayon at that time?—A. No, I do not have a present recollection.

Q. I will show you a brief filed in your behalf before the United States Board of Tax Appeals, involving the tax years 1929, 1930, and 1931, and I will ask you to examine page 8 of that brief, beginning with the first full paragraph, and state whether or not that refreshes your recollection as to why you withdrew those 2,000 shares in December 1931, from the Chase National Bank (handing)?—A. Yes, it does. On December 22, 1931, I sold to Mrs. Smith and reported the following losses among other things, 2,000 shares of Industrial Rayon, Corporation. To make delivery of that I had to get it from the Chase National Bank where it was up as collateral.

Mr. SHER. That is all.

Mr. PRATT. I offer in evidence income tax return of John Thomas Smith for the year 1929 and the income tax return of John Thomas Smith for the year 1930; both being certified copies of such returns.

Mr. SHER. Plaintiff objects to the introduction of those two returns as irrelevant and immaterial, outside the issues of this case, remote,

prejudicial, no bearing whatever on the income tax liability of Mr. Smith for the year 1932 as to what he reported in his income tax return for 1929 and 1930. We could go on and on indefinitely, and in fair completion of such returns why we might put in every income tax return that he has ever filed.

Mr. PRATT. Your Honor, on the re-direct examination the door was opened wide to the introduction of these returns.

Mr. SHER. Just how?

Mr. PRATT. And I think—

180 The COURT. I should say that would be true as to 1931, and I think it is already in Defendant's Exhibit A.

Mr. PRATT. Yes.

The COURT. This is a certified copy of the 1931 income tax return.

Mr. PRATT. He just interrogated Mr. Smith about the litigation pending before the Board of Tax Appeals for the years 1929, 1930, and 1931.

Mr. SHER. Oh, your Honor, I showed him a brief to refresh his recollection.

• The COURT. Oh, yes. That was to clear up the question of a substitution of 2,000 Industrial Rayon in the Chase loan. You asked him about the condition of the collateral in that loan in April of 1932, and he told you that while that element of collateral had been present in the early part of 1932, perhaps late in 1931, there was a substitution of 2,000 General Motors for the 2,000 Industrial Rayon and he was on re-direct and he was asked the reason for it.

Mr. PRATT. There was this, too, if your Honor please, on cross-examination he testified without objection by plaintiffs' counsel as to the sale of 2,000 shares of Aldebaran Corporation and 1,900 shares of Hudson Motors Corporation in 1929.

The COURT. Suppose that is so?

Mr. PRATT. Is it not pertinent then to the inquiry to see what Mr. Smith's net income was for 1929 and for 1930?

The COURT. It might be interesting, but how is it legally to have any effect at all?

Mr. PRATT. In this way: we are attempting, and, of course, as he admits it, he had the thought at all times in mind as to a reduction of his income tax liability?

181 The COURT. Yes.

Mr. PRATT. In the year 1929 he admitted having sold this Aldebaran Corporation stock and Hudson Motors stock to the Innisfail Corporation for the purpose of reducing his income-tax liability. May we not find out the extent to which his income-tax liability was reduced as a result of those sales?

The COURT. Why would that tend or how would that tend to establish anything that the jury has to pass on in this case?

Mr. PRATT. Nothing, except—

The COURT. "Nothing" is the answer, my friend. I will sustain the objection.

Mr. PRATT. Exception, please.

The COURT. Do you wish them marked for identification?

Mr. PRATT. Yes.

-(Marked "Defendant's Exhibits C and D for Identification.")

The COURT. What years?

Mr. PRATT. 1929 and 1930.

The COURT. C for Identification is which?

The CLERK. C is '29 and D is '30.

The COURT. Very well.

Recross examination by Mr. PRATT.

Q. Mr. Smith, you testified that you were president of other corporations and that you bought and sold stock for their account?—

A. Yes.

Q. Did you ever in 1931 or 1932, or at any other time sell stock for such corporations?—A. Yes.

Q. For the purpose of establishing a tax loss?—A. Yes.

182 Q. Which corporation was that, Mr. Smith?—A. I think I sold some stock to the Argonaut Consolidated Mining Company at one time.

Q. Was that a corporation in which you owned 100 per cent of the stock?—A. No, that was a corporation of which I am president.

Q. Do you remember when that was?—A. No, I would have to look at the records to get the time.

Q. Was it in 1931 or 1932?—A. I stated I could not tell you what year it was.

Q. Will you please consult the records by which you will be enabled to answer that question?—A. For example, such a transaction as this on the 16th of December 1931, according to the journal entry, we sold to the Argonaut Consolidated Mining Company some Motor Products stock and some Third National Investors stock for \$3,775.

Q. Did they pay in cash for that, do you remember?—A. I think so.

Q. Getting back to the year 1931, you had a net income before deduction of losses and sale of stock of \$441,212.35, did you not?

Mr. SHER. Your Honor, I object to that reading from the 1931 income-tax return.

The COURT. I think it is in evidence.

Mr. PRATT. That is true. It is, your Honor. I will withdraw the question.

The COURT. I think it speaks for itself.

Mr. PRATT. No further questions.

The COURT. I would just like to ask the witness one or two questions, please.

By the COURT:

183 Q. What was the business of the Innisfail Corporation as it was conducted?—A. Buying and selling stocks principally, and in one case I think we bought some commodities.

Q. Did the corporation buy or sell stocks for any stockholder or other person except yourself?—A. No, it sold its own securities. It did not sell securities for others.

Q. That is to say, the only securities that it bought were your securities with the exceptions that I think you stated in your cross examination this morning?—A. Yes; there were three or four occasions where they bought stock from third parties, but most of the stock that they acquired was acquired from me.

Q. And had that corporation any creditors?—A. Not—no; I should say that they never had any creditors except as they owed me money.

Q. You were the only creditor?—A. I think so.

Q. And was there any pay roll of that corporation?—A. A small pay roll from time to time. I think we paid some small amounts; they were not large.

Q. And to whom were those payments made?—A. I think the payment was made to Mr. Doty, as I recollect it.

Q. That is the only payment, isn't that so?—A. That is my best recollection, but I am not clear as to that.

Q. No salaries of officers?—A. I don't believe there were any salaries to any officers of that corporation.

Q. The only physical space that the corporation occupied was in your office?—A. That is right.

Q. And it paid no rent?—A. That is right.

The COURT. I think that is all.

Mr. SHER. May I just ask one question—

The COURT. Surely.

Mr. SHER (continuing). Because of your Honor's question?

The COURT. Surely.

164

By Mr. SHER:

Q. Mr. Smith, do you recall my reading to the jury the resolution approved or rather the minutes containing a resolution approving the purchase of these securities from you in 1932?—A. Yes.

Q. And also reading to the jury, "The chairman then presented a syndicate agreement between"—A. Yes; I remember that, the Kolbe business, which is a participation in a syndicate, involving the Pathe Exchange. That was an outside transaction and a pretty large transaction, too, involving a great many thousands of dollars.

The COURT. Well now, just let me ask you—have you finished?

Mr. SHER. Yes.

By the COURT:

Q. What do you mean by "an outside transaction"? Was there any individual but yourself interested in that syndicate arrangement?—A. Oh, yes.

Q. You have not let me finish.—A. Pardon me.

Q. (Continuing.)—whose rights or interests are covered by the resolution which was referred to and part of which was just read?—

A. Well, the resolution I have reference to I think refers to a participation by this corporation in a syndicate of third parties which I did not have anything to do with. In other words, that syndicate had purchased some Pathe Exchange securities.

Q. Yes.—A. And the Innisfail Corporation was becoming participants in those purchases by joining this syndicate.

Q. Now, was it doing that at the instance of any person but John Thomas Smith?—A. No; I think that is correct. I wanted to have them do it.

185 Q. It was one of John Thomas Smith's commercial or financial enterprises, wasn't it?—A. No; I think it was its enterprise, not mine, your Honor.

Q. Of course, that is debatable. That is one of the things that the jury will probably pass upon, but what I mean to say is that the corporation did not enter into this syndicate arrangement at the instance of any person but yourself?—A. Oh, I asked them to do it; yes.

Q. That is what I thought. I meant to ask you this: did you say that the original directors of this corporation signed a resignation at the time they were elected?—A. I don't recollect.

Q. Suppose we find out.—A. You can get that from the records. On June 15th, the resignation—

Q. What year, please?—A. 1926. This was at the start; the resignation was signed and approved by the directors, the board of directors by Mr. Russo, and took effect "upon acceptance by you." That is, the board of directors.

Q. Was his resignation ever accepted down through the year 1932?—A. No; I don't think so. I think Mr. Russo continued, I think, but some of the other men went out.

Q. How many were there on this board; three?—A. Three; yes, sir.

Q. You and two others?—A. Well, I wasn't on at this time. I came on and some of these men got out.

Q. When did you go on? There is a resolution concerning withdrawal of funds and so on by Mr. John T. Smith, president. I presume that you went on the board before that resolution.—A. I think I was elected a director on the 12th day of March.

Q. Of what year?—A. 1927.

Q. That takes care of you and Russo. Who was the third director from that time or from that date until the end of 1932?—A. Mr. Hogan was a director. The directors at the meeting in December 1927 were Smith, Hogan, and Russo.

186 Q. When did Mr. Hogan become a director?—A. He again became a director on the 12th day of March 1927.

Q. And did he continue to be a director through 1932?—A. Yes; I think he did, sir.

Q. What have you about his resignation?—A. I have nothing about his resignation. He is a director still, I think, at the present time.

Q. So that the board was made up of yourself and Russo and Hogan?—A. Yes, sir.

Q. And you hold or at least Russo's resignation was at the disposition of the board from the time that he became a director through the year 1932?—A. Yes, sir.

Q. Was the same thing true about Hogan?—A. I don't think so. I don't see any resignation from Mr. Hogan here and there was not, in fact, because Mr. Hogan is a director still.

Q. I do not question that he is a director and I do not question that Russo was or still is, so far as the record shows, subject to be removed by the acceptance of his resignation. I want to know if the same thing is true in the case of Mr. Hogan?—A. No; I don't think that is true in the case of Mr. Hogan.

Q. Well, then, during those years that the board functioned, if it did function under yourself, Mr. Russo, and Mr. Hogan, Mr. Russo's resignation was at all times pending subject to action by the board?—A. That is correct.

Q. And you say that so far as you remember the board never took a position adverse to your own on the subject of the purchase or sale of any of these securities?—A. I think that is true.

The COURT. That is all.

Mr. PRATT. No further questions.

187 WILLARD DOTY, called as a witness on behalf of the plaintiffs, being duly sworn, testified as follows:

Direct examination by Mr. SHER:

Q. What is your occupation, Mr. Doty?—A. I am an employee of the General Motors Corporation, managing clerk of the legal department, and also employed by Mr. Smith as one of his secretaries, his personal accountant in charge of his books, tax reports for himself and his family, Innisfail Corporation, employed as an accountant for the Argonaut Consolidated Mining Company, in charge of their books, the White Knob Copper & Development Company since 1927 and for the Innisfail Corporation since 1927.

Q. What did you do prior to 1927?—A. Well, I was with a manufacturing concern as their accountant for about two years, and prior to that I did public accounting.

Q. And how long have you been engaged in accounting work altogether?—A. Oh, I should say about 20 years.

Q. What books do you keep for Innisfail Corporation?—A. Cash book, journal ledger, check book, and any financial records they have relating to their security set-up.

Q. What books do you keep for John Thomas Smith?—A. Keep his check book, his journal, cash book, ledger, any other financial records.

Q. What books do you keep for Mary A. Smith?—A. I keep a record of her investments and the dividends which she receives during the years from which I make up her tax records.

Q. Do you keep these books in the regular course of business?—A. Yes.

Q. And is it the regular course of your business to keep these books?—A. Yes.

Q. And did you make entries at or about the time of the transactions they describe?—A. Yes.

Q. Do you prepare income tax returns for Innisfail Corporation?—A. Yes.

188. Q. How many years have you been doing that?—A. Ten years.

Q. And you prepare income tax returns for John Thomas Smith?—A. Yes.

Q. How many years have you been doing that?—A. Ten years.

198. Q. Mr. Doty, did you hear Mr. Smith testify that he sold certain securities to Innisfail Corporation on December 29, 1932?—A. Yes; I did.

Q. Does Innisfail Corporation still have those securities?—A. Well, I would have to look at the books and—

199. Q. Will you examine the ledger—A. (Continuing.) And check the records. If you will let me know what those securities were.

Q. 500 shares of Electric Auto Lite Company stock.—A. It still has that stock.

Q. 500 shares of Firestone Tire & Rubber Company stock?—A. Still has it.

Q. 332 shares of Gaynor Electric Company stock?—A. Yes, sir. Still has that stock.

Q. 1,553 shares of Investrad Corporation stock?—A. No; that stock was liquidated. The company was liquidated.

Q. When?—A. I think in '33.

Q. Yes.—A. Some time around there. I can tell from the books, some time after 1932.

Q. Will you turn to that, please, and tell us what happened on the liquidation of that company?—A. In January 1935, it received—

Q. When you say "it" will you please state to what you refer?—A. The corporation received.

Q. Which corporation?—A. The Innisfail Corporation received in partial liquidation 217 shares of General Motors Corporation, together with cash amounting to \$6,198.

Q. That was received, you say, by Innisfail Corporation?—A. By Innisfail Corporation, January 11, 1935.

Q. On the liquidation of Investrad Corporation?—A. Investrad Corporation: yes.

Q. Does Innisfail Corporation still hold 18,324 shares of National Baking Company stock which Mr. Smith testified he sold to it in December 1932?—A. No; that was distributed as a dividend in kind.

Q. When?—A. In 1936, I believe, August 1st, 1936. That was distributed as a dividend.

Q. To the stockholders?—A. Of Innisfail Corporation.

Q. And who were the stockholders of Innisfail Corporation at that time?—A. Mrs. Smith's three children.

Q. Was Mr. Smith a stockholder of Innisfail Corporation at that time?—A. Mr. John T. Smith; no.

200 Q. Mr. John T. Smith?—A. No.

Q. Does Innisfail Corporation still hold 800 shares of National Sugar-Refining Company stock which Mr. Smith testified he sold to Innisfail in December 1932?—A. Yes; it still holds that stock.

Q. Mr. Doty, do you have these stock certificates for the stock which Innisfail Corporation still holds?—A. I believe they are all right there [indicating].

Mr. SHER. May the record show that these certificates were produced in court?

Do you want to examine them?

Mr. PRATT. I may as part of my cross-examination of Mr. Doty.

Mr. SHER. I would like the record to show that now, if you want to go through the certificates, we will be glad to show them to you.

Mr. PRATT. Whatever you desire to do.

Mr. SHER. I am making an offer to have the record show that the certificates of the stock which the witness just testified Innisfail Corporation still holds, the stock which the plaintiff sold to it in 1932.

Mr. PRATT. I have no objection to the record including that statement.

The COURT. All right.

Q. Did Innisfail Corporation receive any dividends on securities which it bought from Mr. Smith in 1932?—A. Yes. If any dividends were paid on the securities the Innisfail Corporation received them.

Q. Did you include the dividends on these securities in preparing the Innisfail Corporation income tax returns for 1933?—A. Yes.

Q. 1934?—A. Yes.

Q. 1935?—A. Yes.

201 Q. 1936?—A. Yes.

Q. 1937?—A. Yes.

Q. Mr. Doty, do you have a record of Mrs. Smith's investments as of December 31, 1932?—A. I think I have it here. December 31, 1932?

Q. Yes. Will you read what Mrs. Smith had in her personal estate at that time?—A. You just want the shares?

Q. The shares and the value.—A. The market value?

Q. Yes.—A. 1,900 shares of Argonaut Consolidated Mining Company, market value \$2,900; 4,000 shares of Caterpillar Tractor Company, market value \$28,000; 1,000 shares of Chrysler Corporation, market value \$16,375; 420 shares of Central Guiara Sugar Company, \$18,270; 37,585 shares of General Motors Corporation, market value \$493,000; 2,000—

Q. How much was that on the General Motors?—A. \$493,000; 2,000 shares of Industrial Rayon Corporation, market value \$58,750; 1,000

shares of Underwood-Elliott-Fisher Company, market value \$12,250; 6,495 shares of White Knob Copper & Development Company preferred, \$6,776.50.

The COURT. How much was that?

The WITNESS. \$6,776.50; 9,900 shares White Knob Copper Development Company common, market value \$495.

Q. What is the total?—A. The total is \$636,816.50.

Q. Do you have a record of Mrs. Smith's income for the year 1932?—A. Well, do you want her income, net income or income from dividends or what?

Q. Total income you have in the year 1932. If you have it broken down, so much the better.—A. 1932 showed an income from dividends of \$53,725.87. Loss on sale of securities, \$8,868.39. Net income, \$44,857.48.

202 Q. And 1931?—A. Income from dividends, \$108,948; loss on sale of securities, \$24,697.50; net income, \$84,250.50.

Q. 1930?—A. Income from dividends, \$119,957.98; loss on sale of securities, \$23,065; net income, \$96,892.98.

Q. 1929?—A. Income from dividends, \$156,778; no losses. That was the net income, \$156,778.

Q. Do you have 1928; I will ask you that as the last year—A. \$141,313 from dividends and the same for the net, no stock losses.

Q. Mr. Doty, did you hear Mr. Smith testify that he owed Innisfail Corporation \$68,364.68 just prior to the time he sold certain securities to Innisfail Corporation in December 1932?—A. Yes.

Q. Do you have with you the ledger account of John Thomas Smith?—A. Yes.

Q. Will you turn in that ledger to his account of Innisfail Corporation?—A. Yes; I have the account.

Q. Will you look at 1932, first item on the debit side, January 5th, cash to cover Chrysler dividend, the first for 1932?—A. \$4,119.25.

Q. Do you have any supporting documents for that entry?—A. I have the cash book entry.

Q. First, what does that item represent?—A. It represents a cash payment from Mr. Smith to Innisfail Corporation covering that dividend.

Q. In other words, a cash payment by Mr. Smith to Innisfail Corporation for \$4,119.25?—A. Yes.

Q. Do you have with you the check which Mr. Smith gave to Innisfail Corporation for that amount?—A. I have. I have.

Mr. SHER. If the Court please, the plaintiff offers in evidence a check dated January 5, 1932, to the order of Innisfail Corporation for \$4,119.25, signed by J. T. Smith.

Mr. PRATT. No objection.

203 The COURT. What is it? You say "that is."

Mr. SHER. Do you want me to answer that, your Honor?

The COURT. Anybody, so long as I know what it is.

Mr. SHER. That is a payment by Mr. Smith to Innisfail Corporation on January 5, 1932, in the amount of \$4,119.25. I think it would—

The COURT. Representing what?

Mr. SHER. You better go ahead, Mr. Doty.

The WITNESS. Dividend of 25 cents per share on 16,477 shares of Chrysler Corporation.

The COURT. On how many shares?

The WITNESS. 16,477, dividend of January 4, 1932.

Mr. SHER. I think, if your Honor please, this is a transcript of the account, which might be helpful [handing to the Court].

The COURT. You will probably need it.

Mr. SHER. No; I have another one if you would rather keep it.

The COURT. All right.

(Marked "Plaintiffs' Exhibit No. 25.")

Q. Mr. Doty, will you explain why Mr. Smith made this payment to Innisfail Corporation at that time?—A. Well—

Mr. PRATT. I object to the operation of Mr. Smith's mind as coming from this witness.

The COURT. If Mr. Smith said anything to the witness when he signed the check or delivered the check to the witness, I will allow him to state what was said.

Mr. PRATT. Yes.

204 The WITNESS. As nearly as I can recall, Mr. Smith said, "I better draw a check to the Innisfail Corporation and deposit it in the Innisfail bank account." It was their dividend and that that should be done.

Q. On what stock was that dividend paid?—A. On Chrysler.

Q. That was owned by whom?—A. By Innisfail Corporation.

Q. And was standing in whose name?—A. John T. Smith's.

Q. And, therefore, the dividend was received by Mr. Smith—A. Well—

Q. (Continuing.) In the first instance?—A. It was received by his bank; yes.

Q. And then with this check he paid that dividend over to Innisfail Corporation?—A. That is right.

Q. Is that right?—A. That is right.

Q. I direct your attention to the next item in the debit account for 1932, February 10th, audit fee, \$200. Do you have a check for that account?—A. Well, that was a part of a check for \$1,200 paid to Barrow, Wade & Guthrie for an audit of the books from January 8th, 1932, to October 31st, 1932, and I apportioned \$200 of that to the Innisfail Corporation.

Q. And charged Innisfail Corporation—A. And charged them with it; yes.

Q. With \$200?—A. Yes.

Q. I direct your attention to the items dated December 29. Those items represent the stock which Mr. Smith testified he sold to Innisfail Corporation on that date; is that right?—A. Yes; that is true.

Q. Will you look at the credit side of the account?—A. The first item?

Q. Yes; the first item after the balance brought down is
205 January 4th, dividend on 16,477 shares of Chrysler stock. Do you have any entry regarding that?—A. Yes, I have; a check-book entry.

Q. Will you read it?—A. Under date of January 4, 1932, Chrysler Corporation, dividend of 25 cents a share and the amount of the following—do you want the whole entry?

Q. Read the one pertaining to Innisfail Corporation.—A. Innisfail Corporation, 16,477 shares, \$4,119.25.

Q. And that is the entry in what? Your check book?—A. Check book; yes.

Q. And you have an entry in your cash book?—A. Cash book.

Q. And you have an entry in the Innisfail book for that amount?—A. There may be an entry in the cash book, in the check book, or the ledger.

Q. Of Innisfail?—A. Innisfail. When they received this check for this item, and you say—

Q. Just a moment. Mr. Smith received the \$4,119.25 as a dividend on Chrysler stock standing in his name but owned by Innisfail Corporation, and you testified you made an entry in Mr. Smith's books?—A. Yes.

Q. Do you make any entry in the Innisfail's books?—A. No.

Q. No entry in the Innisfail journal?—A. No entry in the Innisfail book, because the next day or that same day the check was drawn—check was drawn to Innisfail covering that dividend.

Q. In other words, it was paid over immediately?—A. Paid over to Innisfail Corporation; yes.

Q. Will you look at the next item, dividend on 1,900 shares of Hudson Motor stock, \$475.—A. That is entered in the check book of Mr. Smith under January 2nd, Innisfail Corporation, dividend of 25 cents per share on 1,900 shares of Hudson Motor Car Company, \$475.

Q. Do you have any entry in the Innisfail books for that?—
206 A. That was credited to the Innisfail Corporation by journal on January 2nd, 1932. Mr. Smith's account was charged with \$475 and income from dividends Hudson Motor Car Company credited with \$475.

Q. Do you have an entry in the Innisfail journal?—A. Yes.

Q. (Continuing.) Which you can read?—A. January 2nd, 1932, John T. Smith, \$475, Hudson Motor Car income from dividends, \$475, dividend of 25 cents per share on 1,900 shares.

Q. The next item is May 25, cash \$10,000. Do you have a check for that amount?—A. That was a receipt from Innisfail Corporation to Mr. Smith.

Q. Mr. Smith received—A. \$10,000.

Q. \$10,000 from Innisfail Corporation?—A. Yes; May 25, 1932. Do you want the Innisfail check on that?

Q. Do you have that?—A. Yes.

Mr. SHER. Plaintiff offers in evidence a check dated May 25, 1932, to the order of Chemical Bank and Trust Company, account of John T. Smith, \$10,000, signed by Innisfail Corporation, J. T. Smith, president.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit No. 26" and read to the jury.)

Q. Mr. Doty, I direct your attention to the next item of 1932, dated September 14th, payment for purchase of 900 shares of New Haven for the account of John T. Smith. Will you read your supporting entries on that item?—A. On September 14th, 1932, Mr. Smith bought 900 shares of New York, New Haven & Hartford Railroad from Appenzeller, Allen & Hill, in the amount of \$16,312.50.

It was paid from the funds of Innisfail Corporation, and I 207 made a journal entry charging Appenzeller, Allen & Hill with the payment and crediting Innisfail Corporation with \$16,312.50.

Q. You credited Innisfail Corporation on Mr. Smith's books?—

A. Yes.

Q. With that amount?—A. Yes.

Q. Do you have that check?—A. Yes.

Mr. SHER. Plaintiff offers in evidence check dated September 14, 1932, to the order of Appenzeller, Allen & Hill by Innisfail Corporation, J. T. Smith, president, in the amount of \$16,312.50.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit No. 27.")

Q. Mr. Doty, what was the state of the account at the end of 1932?—A. Well, the account was in balance at the end of 1932.

Q. And what was the state of the account at the beginning of 1932?—A. Mr. Smith owed Innisfail Corporation \$41,777.18.

Q. Carried over from 1931?—A. That is right.

Q. Let us look at 1931, then. How did that year start? What was the state of the account at the beginning of 1931?—A. Mr. Smith owed the Innisfail Corporation \$22,460.45.

Q. Let us look at the first debit item in 1931, October 1931, petty cash disbursements 27 cents. Do you happen to have a check for that amount?—A. No; that was a journal entry for some petty cash disbursements made during the month.

Q. Do you have a journal entry for it, incidentally?—A. Yes. Innisfail Corporation current account debited 27 cents, and there is a similar item in John Thomas Smith's ledger account for 27 cents. That was a petty cash disbursement for postage and carfare paid to New Jersey.

208 Q. Look at the next item, New Jersey franchise, \$10. Do you have a check for that amount?—A. November 1931?

Q. November 2nd, 1931.—A. I will have to get his check book. Yes; here is the check and the bill [handing].

Mr. SHER. Plaintiff offers in evidence check dated November 2nd, 1931, to the order of the State Tax Commission of the State of New

Jersey for \$10, signed John T. Smith special by H. M. Hogan, attorney.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit No. 28.")

Q. Will you look at the credit side of the account, Mr. Doty, and the first item is January 2nd, dividend on 16,477 shares of Chrysler, \$4,119.25. Do you have an entry in Mr. Smith's cash book for that?—A. Cash book?

Q. Yes.—A. January 2, 1931, Innisfail Corporation, dividend of 25 cents per share on 16,477 shares of Chrysler Corporation, \$4,119.25.

Q. And did you make an entry in the Innisfail books for that amount?—A. Yes; there was an entry in the Innisfail books.

Q. In what?—A. In the Innisfail book.

Q. In the Innisfail journal, would that be?—A. Journal entry; yes.

Q. All right. Will you read that?—A. January 2, 1931, John T. Smith, \$4,119.25, to Chrysler Corporation income from dividends, \$4,119.25, dividend of 25 cents per share on 16,477 shares.

Q. And that is again a dividend on the Chrysler stock owned by Innisfail?—A. Yes.

Q. And in the name of Mr. Smith?—A. Yes.

Q. Now, look at the next item, January 3rd—
209 The Court. May I interrupt you for just a moment, please?

By the Court:

Q. Do I understand the transaction that you are telling us about was this: that as to that dividend on Chrysler stock the dividend was received by Mr. Smith personally and used by himself, but that he caused an entry to be made in the corporation books of Innisfail Corporation, indicating that he owed that corporation that much money?—A. Yes, sir.

Q. And that is true as to the three other dividends for the year 1931 paid by the Chrysler Corporation?—A. Yes.

Q. And it is true as to the four dividends by the Hudson Motor Company of \$475 each?—A. Yes, your Honor.

Q. That covers the year 1931?—A. Yes.

Q. And it means as to those eight dividends the money went directly to Mr. Smith but he caused an entry to be made in the books of the corporation indicating that he owed the corporation for those respective sums?—A. That is right.

Q. So that the end of the year he owed the corporation \$41,787.45?—A. At the close of the year 1931.

Q. Yes.—A. \$41,717.18.

Q. That \$10 difference.—A. Well, you took the total.

Q. Oh, yes. You charged against that the two items, one \$10 paid by his personal check special account and the other 27 cents?—A. Yes.

The Court. That covers it.

Mr. SHER. May I make one observation as to that?

The Court. Yes.

Mr. SHER. An entry was also made in Mr. Smith's books showing his accountability for those dividends.

20 The COURT. Yes.

Mr. SHER. May the record show—

The COURT. Ask your question about Mr. Smith's books.

Mr. SHER. Very well, your Honor.

By Mr. SHER:

Q. Did you make any entry in Mr. Smith's books when those dividends were received?—A. Oh, yes; I made a cash book entry and credited Innisfail Corporation with the amount of the dividends.

Q. Have you read any of those?—A. I just read one in January;

yes.

Q. So that the record may show entries were made in Mr. Smith's books, showing his accountability for those dividends—

The COURT. The entries in Mr. Smith's books were to correspond to the entries in the Innisfail books, were they?

The WITNESS. Yes, sir.

Q. Will you look at 1930, Mr. Doty, and tell us what was the state of the account between Mr. Smith and Innisfail Corporation at the beginning of that year?—A. The Innisfail Corporation owed Mr. Smith \$267,453.61.

Q. And the only item on the debit side is one of November 30, petty cash disbursements, 94 cents?—A. Yes.

Q. Do you have a book entry for that?—A. Yes, under date of November 30, 1930, Innisfail current account debit 94 cents, John T. Smith office ledger account, 94 cents.

Q. Will you look at the credit side? You will note the first item January 2nd, dividend on 30,889 shares of Chrysler; \$23,166.75. Will you turn to Mr. Smith's cash book?—A. Under date of January 2, 1930, Innisfail Corporation credited by the dividend of 75 cents per share on 30,889 shares of Chrysler Corporation, \$23,166.75.

Q. And that also represented a dividend on stock owned by Innisfail Corporation, but standing in the name of Mr. Smith as income?—A. That is right.

Q. Look at the next item, April 1, 1930, dividend on 26,477 shares of Chrysler, \$19,857.75. Will you turn to Mr. Smith's cash book?—A. April 1, 1930, Innisfail Corporation credit dividend of 75 cents per share on 26,477 shares of Chrysler Corporation, \$19,857.75.

Q. That again was a dividend on Chrysler stock owned by Innisfail standing in the name of Mr. Smith as nominee?—A. Yes.

Q. Did you make a counter entry in the books of Innisfail Corporation?—A. Yes.

Q. Can you turn to that?—A. April 1, 1930, John T. Smith, debit \$19,857.75 to Chrysler Corporation income from dividends credit \$19,857.75, dividend of 75 cents per share on 26,477 shares.

Q. Do you have an entry in the Innisfail book for the January 2 item?—A. Yes, I do.

Q. Will you please read that?—A. January 2, 1930, John T. Smith debit \$23,166.75 to Chrysler Corporation income from dividends \$23,166.75, dividend of 75 cents per share on 30,889 shares.

Mr. SHER. If your Honor please, there are four more dividends or five more dividends similar to the ones about which the witness has testified and I would like to ask the witness to look at the items on the account and state whether or not he made similar entries for those items in Mr. Smith's cash book and in the journal of Innisfail Corporation.

The WITNESS. Yes, I did.

The COURT. Each of those entries indicate the receipt by Mr. Smith of the amount of the dividends and the use by him of the money by depositing it in his own account and charged against him in the corporate records for that sum?

The WITNESS. Yes, sir.

The COURT. That is the only way the corporation had any evidence of the receipt of the money by Mr. Smith?

The WITNESS. Yes.

Q. Will you turn then to the item dated September 30, the sale of 10,000 shares of Chrysler, \$195,000 and will you turn to Mr. Smith's journal and read what you have on that item?—A. September 30, 1930, Chrysler Corporation investment account, debit \$195,000, to Innisfail Corporation \$195,000, to record sale from latter, 10,000 shares at \$19.50 as per bill of sale on file.

Q. You have an entry in the Innisfail books for that?—A. Yes. There was an entry under date of September 30, 1930, John T. Smith debit \$195,000 to Chrysler Corporation investment account credit \$195,000 to record sale to former of 10,000 shares at \$19.50 per share.

Q. Will you look at the item dated November 10, 1930; cash \$6,000. Do you have a check for that amount?—A. Yes.

Q. Will you turn to Mr. Smith's cash book and read what entry you have on that item?—A. November 10, 1930, Innisfail Corporation credit transfer from New York Trust Company to Chemical Bank Trust Company \$6,000.

Mr. SHER. Plaintiff offers in evidence a check dated November 10, 1930, to the order of Chemical Bank and Trust Company, account of John T. Smith, in the amount of \$6,000, signed by Innisfail Corporation, J. T. Smith, president.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit No. 29.")

213 The COURT. To whose order is that?

Mr. SHER. Chemical Bank and Trust Company, account of John T. Smith.

Q. What was the state of the account between Mr. Smith and Innisfail Corporation at the end of 1930?—A. Mr. Smith owed the Innisfail Corporation \$22,460.45.

Q. And what was the state of the account at the beginning of 1930?—A. Innisfail Corporation owed Smith \$267,453.61.

Q. So that during the course of the year Mr. Smith had paid off his indebtedness to Innisfail Corporation and created an indebtedness of \$22,000 which he now owed to Innisfail Corporation?—A. That is right; yes.

Q. And that was brought about—

The COURT. Your answer means yes, according to the books and records to which you have referred?

The WITNESS. Yes; your Honor.

Q. And Innisfail Corporation reduced its debt to Mr. Smith through the receipt by Mr. Smith of the dividends on this stock which was owned by Innisfail and standing in the name of Mr. Smith?—A. Yes; and by the sale to Mr. Smith of the 10,000 shares of Chrysler Corporation.

Q. Oh, yes; by both of those?—A. Yes.

Q. Let us turn to 1929. What was the state of the account at the beginning of 1929?—A. The Innisfail Corporation owed Mr. Smith \$312,666.51.

Q. Let us look at the first debit item April 12, purchase of 5,000 shares Ecuadorian Corporation, \$15,171.87.—A. That was a journal entry in Mr. Smith's book April 12, 1929, Innisfail Corporation debit \$15,171.87 to Ecuadorian Corporation \$15,171.87, charging the former with purchase of 5,000 ordinary stock, Ecuadorian Stock Limited for account of Innisfail Corporation at \$3 per share.

214 Q. In other words, Mr. Smith paid for the 5,000 shares of Ecuadorian stock, Innisfail Corporation got the stock, and Mr. Smith charged Innisfail with the amount he paid?—A. That is correct; yes.

Q. Let us look at the next item, May 21, 1929, audit fee, \$200.—A. Well, that is the same kind of entry as the last. We paid Barrow, Wade & Guthrie a certain amount and I charged \$200 of that to the Innisfail Corporation for their proportion of the audit fee.

Q. Let us look at the entry June 30, purchase 620 Ecuadorian Corporation 6% debentures, purchase 589 shares Ecuadorian Corporation stock, 50 shares Quito Electric Light & Power Company, common stock that is, and 10 shares Quito Electric Light & Power preferred, totalling \$1,825. That was a sale by Mr. Smith to Innisfail Corporation of those securities?—A. Yes; for the sum of \$1,825.

Q. So, Innisfail Corporation owed Mr. Smith \$1,825 for the stock which they bought?—A. That is correct.

Q. Let us look at the next item, June 26, purchase 4,990 Ecuadorian Corporation for \$15,106.45.—A. That was a purchase by Mr. Smith for the account of Innisfail Corporation of 4,990 shares Ecuadorian Corporation, Ltd. ordinary stock at \$3.027 per share, \$15,106.45.

Q. Mr. Smith paid out \$15,106.45 and Innisfail Corporation got the 4,990 shares of stock and Mr. Smith charged Innisfail Corporation with the amount which he laid out?—A. That is correct; yes.

Q. Let us look at the next item October 28, New Jersey franchise tax, \$10.—A. That was a franchise tax for the year 1929 paid from

the Chemical Bank special account \$10 for the account of Innisfail Corporation.

Q. And look at the next item of December 28, purchase of 1,000 shares Aldebaran Corporation, \$160,800.—A. That was a sale from Mr. Smith to Innisfail Corporation of 1,000 shares of the stock of the Aldebaran Corporation for \$160,800.

215 Q. And was Innisfail Corporation so charged with the purchase price?—A. They were so charged with the purchase price.

Q. What is the next item?—A. December 31.

Q. Yes; December 31, purchase 1,900 shares Hudson Motor \$106,400.—A. That was the same thing. Mr. Smith sold to the Innisfail Corporation 1,900 shares of Hudson Motor Car Company for the sum of \$106,400, and charged that with the journal entry.

Q. What is the next entry, petty cash, sundries \$8.18.—A. That was a petty-cash disbursement made by Mr. Smith for the account of Innisfail Corporation and that journal entry charged it on the books of the corporation—charged the corporation with that amount.

Q. Mr. Doty, in each one of these cases in 1929 where you testified that Mr. Smith laid out money for Innisfail and, therefore, charged Innisfail with the amount, will you get the books on those items?—A. Where he paid out money for the account of Innisfail?

Q. Yes; in each case.—A. What is the year?

Q. 1929, the items you have just gone over. I am simply trying to get all the books, or checks rather I should have said, all the checks at once to save some time and instead of asking you item by item.—A. Oh, I see. Here is a check of June 26, 1929, to Norton, Inc., for the purchase of 5,000 shares Ecuadorian, \$15,136.72. I might add further that referring to the account of Innisfail Corporation, 4,990 shares, \$15,106.45, and John T. Smith 10 shares, \$30.27, making a total of \$15,136.72.

Q. And of this \$15,136.72 that Mr. Smith paid out, how much did he charge to Innisfail Corporation?—A. \$15,106.45.

Q. And Innisfail Corporation got how many shares of the Ecuadorian stock?—A. 4,990.

Q. And Mr. Smith bought altogether how many?—A. 5,000.

216 Mr. SHER. Plaintiff offers in evidence check dated June 26, 1929, to Norton, Inc., from J. T. Smith in the amount of \$15,136.72.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit No. 30.")

Q. Let us look at the credit side of 1929, Mr. Doty, and the first item is a dividend on 31 shares Ecuadorian Corporation preferred. \$108.50.—A. Well, that represented the transaction of January 2nd of \$3 a share, 31 shares of Ecuadorian Corporation owned by the Innisfail Corporation.

Q. And standing in whose name?—A. Apparently standing in Mr. Smith's name.

Q. He received the dividend?—A. He received the dividend and credited it.

Q. And credited it to Innisfail Corporation?—A. That is right.

Q. I will ask you to look at the credit side of 1929. You will notice a number of other dividend entries.—A. Yes.

Q. Will you state whether or not all those other dividend entries represent similarly a receipt by Mr. Smith of dividends on stock standing in his name but owned by Innisfail Corporation and, therefore, credited by him to Innisfail Corporation?

Mr. SHER. Your Honor, I am simply trying to save time.

Mr. PRATT. I object to that, your Honor, his question is calling for a conclusion with a characterization about stocks of Chrysler Corporation being owned by Innisfail, and no evidence.—

The COURT. Will you change it to stock carried in the name of Mr. Smith individually?

217 Mr. SHER. Yes, your Honor.

The COURT. According to the testimony, it was the property of the Innisfail Corporation standing in his name as the nominee.

Mr. SHER. Yes, your Honor.

The COURT. Any objection to that?

Mr. PRATT. No, your Honor.

The WITNESS. Well, there were several receipts of dividends by Mr. Smith on stock standing in his name which he received for the account of Innisfail Corporation, but there were several other credits.

Q. I am just asking about the dividends of 1929. How did you treat those? What did you do? What entries did you make?—A. Well, in the books of Innisfail Corporation I made journal entries and charged Mr. Smith and credited the income from dividends of these various companies.

Q. And what did you do on Mr. Smith's books?—A. The cash books showed a receipt of the dividend and through the cash book was credited to Innisfail account and in Mr. Smith's ledger.

Q. Will you look at the first item that is not a dividend, on the credit side of 1929, June 30, redemption of 10 shares Quito Electric Light & Power preferred, \$200. What do you have on that?—A. I have a receipt in the cash book of \$200, representing redemption of 10 shares of preferred stock of Quito Electric Light & Power Company owned by Innisfail Corporation.

Q. And do you have an entry in the Innisfail journal?—A. Yes; June 30, 1929, John T. Smith, debit \$200 to Ecuadorian Corporation, Quito Electric Light & Power Company investment account, \$200, redemption June 11, 1929, 10 shares Quito Electric Light & Power Company preferred stock.

Q. Will you look at the item dated July 17, 1929, cash of
218 \$5,000. What entry do you have on that?—A. I have the receipt of \$5,000 from Innisfail Corporation in Mr. Smith's cash book.

Q. And the next, July 23, cash, \$100,000?—A. The same for that received in his check book from Innisfail Corporation, \$100,000.

Q. Do you have those two checks, one for \$5,000 and one for \$100,000?—A. Yes.

Mr. SHER. Plaintiff offers in evidence a check dated July 17, 1929, to the order of Chemical Bank and Trust Company, account of John T. Smith, in the amount of \$5,000, signed by Innisfail Corporation, J. T. Smith, president, and a check dated July 23, 1929, to the order of Chemical Bank and Trust Company, account of John T. Smith, in the amount of \$100,000, signed by Innisfail Corporation, J. T. Smith, president.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibits Nos. 31 and 32.")

Q. Mr. Doty, the next item is July 25, redemption of 50 shares Quito Electric Light & Power Company common, \$750. What do you have on that?—A. I have a receipt in Mr. Smith's cash book of \$750, whereby I credited the Innisfail Corporation with that amount, representing the redemption of 50 shares of the common stock of Quito Electric Light & Power Company.

Q. Do you have an entry in the Innisfail book?—A. Under date of July 25, 1929, I have a journal entry, in the Innisfail books, debit John T. Smith, \$750, and crediting the investment account of Quito Electric Light & Power common stock \$750, for the redemption of 50 shares.

Q. The next item, Mr. Doty, not a dividend, is December 6, 1929, sale of 4,412 shares of Chrysler, \$145,596.—A. Yes.

Q. What do you have on that?—A. I have a journal entry.

219 Q. In whose book?—A. In Mr. Smith's book charging the Chrysler Corporation investment account with the purchase of 4,412 shares from Innisfail Corporation for the sum of \$145,596.

Q. And what do you have in the Innisfail account?—A. Under December 6, 1929, in the journal, Innisfail Corporation, John T. Smith debit \$145,596 Chrysler Corporation investment account, credit \$145,596, recorded sale to the former of 4,412 shares.

By the Court:

Q. That means a sale by the corporation to Mr. Smith?—A. Yes.

Q. Any memorandum or bill of sale executed in connection with it?—A. Oh, yes; we always made out bills of sale.

Q. Was that sale at a lower or higher price than the acquisition price by the corporation?—A. I should say it was a lower price.

Q. And is that operation reflected, so far as you know, in the income-tax returns of the corporation for the year 1929?—A. Well, it would be reflected—

Q. In other words, did the corporation claim a loss arising from that sale?—A. If they were permitted to do so in that year they did it. I don't know about 1929 just how the tax law operated as to losses, whether they were permitted to deduct the entire losses or not.

Q. I didn't ask you whether they claimed the entire loss. I asked whether that loss was reflected in the return.—A. It was undoubtedly

reflected—yes; it was reflected in the return to the extent that it was allowed.

Q. It was?—A. Yes.

By Mr. SHER:

Q. Mr. Doty, can you look at your books and tell us?—A. I can't tell from the books how the corporation return was made out.

290 Q. Can you—A. I can tell from the books—

Q. (Continuing). Whether there was a gain or a loss?—A. (Continuing). That we had a loss of \$139,000.

Q. Was that stock sold at market value?—A. Oh, yes.

By the COURT:

Q. Was there any evidence of that sale apart from the memorandum of sale that you say was executed? The stock was already in the name of Mr. Smith, wasn't it?—A. Yes; at that time.

Q. So that it was not necessary to make an alteration of the certificates or have any transfer in or out of the corporation, was it?—A. No.

The COURT. All right.

By Mr. SHER:

Q. Mr. Doty, what was the state of the account between Mr. Smith and Innisfail Corporation at the end of 1929?—A. Innisfail Corporation owed Mr. Smith \$267,453.61.

Q. What was the state of the account at the beginning of 1929?—A. The Innisfail Corporation owed Mr. Smith \$312,666.51.

Q. So Innisfail Corporation reduced its debt during the course of the year of 1929 to Mr. Smith?—A. That is right; yes.

Q. And that was accomplished partly through the receipt by Mr. Smith of dividends on stock, the testimony has shown to be, owned by Innisfail but standing in the name of Mr. Smith?—A. Yes, sir. That was part of it.

Q. Let us look at 1928. What was the state of the account at the beginning of 1928?—A. Innisfail Corporation owed Mr. Smith \$67,134.06.

291 Q. January 4th you have a cash debit item of \$300.—A. Yes.

Q. What was that?—A. That was the receipt of cash from Mr. Smith, \$300.

Q. Do you have a check for that amount?—A. No; that was—may I change that answer there? Apparently there was \$300 deposited in the Innisfail Corporation account and Mr. Smith charged that to the cash book for \$300.

Q. What records do you have of that transaction?—A. I have a cash book entry here under date of January 4, charging the Innisfail Corporation with three items of \$100 each.

Q. Let us look at the next item which is June 30, 1928, purchase 100 shares of White Knob Copper & Development preferred for \$100. What do you have on that?—A. \$100.82.

Q. The next item is petty cash sundries of 82 cents and the preceding one was \$100.—A. Well, the \$100 was for the purchase of 100

shares of White Knob Development Company preferred stock at \$1 a share which Mr. Smith made for the account of Innisfail Corporation:

Q. He paid out \$100?—A. He paid out \$100.

Q. Do you have a check for that?—A. I will have to look up that account.

The COURT. I just want to call the District Attorney's attention to the fact that if possible the testimony of this witness respecting corporate transactions of 1929 may render admissible Defendant's Exhibit C for Identification.

Mr. SHER. Your Honor, I think we have put proof—

The COURT. I am not arguing a thing. I am just calling his attention to that fact. That is all.

Mr. SHER. That is the income-tax return.

The COURT. 1929.

222 Mr. SHER. We will urge, of course, that the income-tax return isn't relevant even though the transactions creating the indebtedness of the plaintiff is relevant.

The COURT. I did not mean to start any argument. I am simply calling the attention of the District Attorney to something. I mean, he may disregard it.

Mr. SHER. Oh, I am sorry. I did not hear you. I did not hear you say that you were calling it to the District Attorney's attention.

The WITNESS. I can't seem to find that one entry there.

Q. That is on the \$100?—A. \$100, I don't know whether it was paid from his regular check book account or whether it was paid from the Chemical special account.

Q. But you do have a journal entry for that amount?—A. Yes; I have a journal entry for it.

Q. All right. Will you look at the item of July 19, 1928, subscription to 4,412 shares new Chrysler \$253,690?—A. Yes.

Q. What was that transaction?—A. That was a payment by Mr. Smith of \$253,690 for subscription to 4,412 shares of new Chrysler Corporation common stock at \$57 per share.

Q. Mr. Smith paid for that stock?—A. Yes, he did.

Q. And Innisfail Corporation got the stock?—A. Yes.

Q. And Mr. Smith charged Innisfail with \$253,690?—A. That is right.

The COURT. Will you tell me, by the statement that "Innisfail Corporation got the stock," that is, the testimony by you, Mr. Sher, and if it is a question please put it in the form of a question. What do you mean by that question that you asked? Ask him in whose name the certificate was issued.

223 Q. Mr. Doty, in whose name were the certificates for those 4,412 shares of Chrysler stock issued?—A. I presume they were issued in Mr. Smith's name.

Q. All right. What entries do you have to show the ownership of that stock?

Mr. PRATT. I object, if your Honor please. He cannot testify as to any entries that might indicate—

The COURT. He does not need to characterize the entries, but he can state to us what entries he has in connection with those shares of stock, both corporate and individual.

The WITNESS. Well, they were charged—

The COURT. Just tell us what entries you have, please.

The WITNESS. I have the cash book entry.

The COURT. That is a cash book entry in Mr. Smith's individual cash book?

The WITNESS. Mr. Smith's individual cash book, charging the Innisfail Corporation with \$253,690.

The COURT. What corporate record have you on it?

The WITNESS. Well, at that time I probably entered the certificate numbers.

The COURT. Have you the Innisfail records there?

The WITNESS. I have the Innisfail records, yes.

The COURT. What entry have you from the Innisfail books of account that refer to those certificates of stock?

The WITNESS. I have an entry in the journal of the Innisfail Corporation on July 19, 1928, Chrysler Corporation stock \$253,690 to John T. Smith, \$253,690, advanced by the letter on account of subscription to 4,412 shares new Chrysler Corporation common stock at \$57.50 per share.

24 Q. Do you have any further entry showing Innisfail's relation to that 4,412 shares, any investment account or any list of Innisfail investments that would show?—A. In the security record where I keep a record of the certificate numbers of the stock I would enter it under the Innisfail Corporation.

Q. For those 4,412 shares?—A. For the 4,412 shares.

Q. Do you have that check for \$253,690?—A. The amount of the check drawn at that time was \$445,797.50, subscription to 7,753 shares of new Chrysler Corporation common stock at \$57.50 per share, of which the Innisfail Corporation was charged with \$253,690, representing the subscription for 4,412 shares.

Q. Who was charged with the rest?—A. John T. Smith, \$131,042.50 for 2,279 shares, and his trust was charged with \$61,065, for the purchase of subscription to 1,062 shares.

Q. The next item is August 31, cash \$20,000.—A. Well, that represents a cash advance to Innisfail Corporation for \$20,000.

Q. Do you have the check for that?—A. Yes.

Mr. SHER. Plaintiff offers in evidence check dated August 31, 1928, to the order of Innisfail Corporation in the amount of \$20,000 signed by John T. Smith.

(Marked "Plaintiffs' Exhibit No. 33.")

Q. The next item, Mr. Doty, is December 30, transfer tax on 5,400 shares of Argonaut Consolidated Mining Company, purchased 9/29, \$10.80.—A. Well, that was a charge of \$10.80 for transfer

tax on 5,400 shares which Innisfail Corporation bought and Mr. Smith paid the tax for their account, and charged them in that entry.

Q. He paid out the \$10.80?—A. Yes.

225 Q. The next item is one of 20 cents.—A. Oh, that is petty cash, carefare, and so forth.

Q. That who paid out?—A. Mr. Smith paid out on account of the corporation.

Q. And charged the corporation with that?—A. And charged the corporation with that.

Q. The next item is December 28, purchase of 500 shares of Argonaut Consolidated Mining Company for \$350. What was that?—A. Well, that was a purchase by Mr. Smith for the account of Innisfail of 500 shares of Argonaut Consolidated Mining Company in the sum of \$350, charged to their account, to the Innisfail account, through the cash book.

Q. Do you have a check for that \$350?—A. Yes.

Mr. SHER. Plaintiff offers in evidence check dated December 28, 1928, to the order of Gray & Wilmerding in the amount of \$350, signed J. T. Smith.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit No. 34.")

Q. The next item is petty cash sundries, 50 cents. Do you have an entry for that?—A. Yes; there is an entry for it. That was transfer taxes on 30 shares of White Knob preferred and 70 shares of White Knob common which Innisfail purchased and Mr. Smith advanced.

Q. Mr. Smith paid out 50 cents for Innisfail and charged Innisfail with that tax?—A. Yes.

Q. The next item is dividend declared by the corporation \$70,000. What entries do you have in that?—A. Well, we charged the Innisfail Corporation through the journal for \$70,000 and credited Innisfail Corporation income from dividends with \$70,000.

226 Q. Let us look at the credit side. We see again several entries of dividends on Chrysler stock, Gillette Safety Razor stock—well, those two. Will you state whether or not they represent the same type of entry as was made in the other years about which you have testified?—A. Yes; the same type of entries.

Q. You made similar entries in Mr. Smith's cash book and in the Innisfail journal?—A. Yes.

Q. In the case of the receipt of every one of those dividends?—A. Yes.

Q. Let us look at the first nondividend item, July 20, 1928, proceeds of sale of Chrysler rights \$13.75. What was that?—A. Well, that was in—in this subscription to new stock, and in July 1928, we had to transfer some of the rights from one ownership to somebody else. For instance, Mr. Smith or the trust or Innisfail had a few shares more than they could use or too few, and we transferred them back

and forth so that we could subscribe to different shares and in the course of that transaction the Innisfail Corporation apparently disposed of 5 rights which we credited them for in the amount of \$13.75, which was the market value of the rights on that day.

Q. Mr. Doty, I direct your attention at the next item which is a dividend item, and it says dividend on 30,889 shares of Chrysler?—A. Yes.

Q. The previous dividend item of Chrysler is on 26,477 shares of Chrysler. Will you explain why Mr. Smith was crediting Innisfail with dividends on 4,412 additional shares between April and September 1928?—A. Well, due to the purchase of 4,412 additional shares through—

Q. On what date?—A. In July 1928.

The COURT. July 19, isn't it?

The WITNESS. Yes.

Q. That is a transaction about which you have testified a few moments ago?—A. Yes.

227 Q. October 27, 1928, there is an item Mardan Corporation, Menthol Crystal account, \$14,916.12.—A. Well, that represented the receipt from the Mardan Corporation for the account of the Innisfail Corporation, for the sale of Menthol Crystal, \$14,916.12.

Q. Received by whom?—A. By Mr. Smith for the account of the Innisfail Corporation.

The COURT. Of what?

The WITNESS. Of the proceeds of—well, it says here for sale of Menthol Crystals. The Innisfail Corporation was engaged in the purchase and sale of Menthol Crystals, and this check apparently was paid by Mardan Corporation directly to Mr. Smith.

By the COURT;

Q. Well, do you mean a commodity or a security when you speak of Menthol?—A. It is a commodity.

Q. A commodity?—A. Yes.

Q. Where do the corporation records show the purchase of that?—

A. It made several purchases.

Q. It is shown?—A. I have a purchase account here, Menthol Crystals, for—during the year 1927 they purchased \$4,000 worth.

Mr. SHER. Who is that? To whom do you refer when you say "they"?

The COURT. Just a moment.

Q. 1927? There does not seem to be any here.—A. 1928. I have a charge for—well, they might have bought it in 1927, your Honor, and disposed of it in 1928.

Q. But all I am asking you is it shown on this transcript? I have been looking for it several times and I do not find any purchase. I find the sale of the Menthol Crystals, but I do not find the purchase of the Menthol Crystals.—A. I don't think it is there.

By Mr. SHER:

Q. From whom did Innisfail buy the Menthol?—A. From Mardan.

Mr. SHER. This is merely a transaction between Innisfail and Mr. Smith, if your Honor please. Innisfail bought that commodity from the outside—from a party other than Mr. Smith.

The COURT. But in the transcript it only has to do his transactions.

Mr. SHER. This is a transcript of Mr. Smith's ledger account with Innisfail Corporation.

The COURT. Does the same thing apply to that entry of dividends on 500 shares of Bondshares Fiscal Corporation?

The WITNESS. Yes. That was received by Mr. Smith for the account of the Innisfail Corporation.

The COURT. The Innisfail Corporation, according to your theory, owned 500 shares of Bondshares?

The WITNESS. Yes; they did.

The COURT. Is the purchase shown anywhere in this record?

The WITNESS. No; I don't think so. That was—I believe that the Innisfail made a loan and that was paid for by the receipt of the 500 shares of Bondshares Corporation.

Q. In other words, Innisfail did not purchase the 500 shares of Bondshares Fiscal Corporation from Mr. Smith?—A. No; I don't think so.

229 Mr. SHER. Purchased it from someone else and therefore, it is not shown on this account, your Honor.

The COURT. All right.

Q. Have you completed your reading of the Marden entry?—

A. Yes.

Q. What was the state of the account between Mr. Smith and Innisfail Corporation at the end of 1928?—A. The Innisfail Corporation owed Mr. Smith \$312,666.51.

Q. What was the state of the account at the beginning of 1928?—A. The Innisfail Corporation owed Mr. Smith \$67,134.06.

Q. So, Innisfail increased its indebtedness to Mr. Smith by that amount during the year?—A. Yes.

Q. Let us look at 1927. What was the state of the account at the beginning of 1927?—A. Well, the 1926 and 1927 were run together, so I will have to figure this out.

Q. All right. Let us look at the beginning of 1926, and, of course, the account starts out being in balance?—A. That is right.

Q. What was the first debit item?—A. June 15 miscellaneous disbursements covering incorporation, \$44.39.

Q. What does that \$44.39 represent?—A. That was a check paid to Mr. Russo for disbursements in connection with the organizing of the corporation, incorporating expense, amounting to \$44.39.

Q. Do you have a cash book entry on that?—A. Yes.

Q. Will you read it?—A. Innisfail Corporation debit under June 15, 1926, Anthony J. Russo, fare to Freehold, New Jersey, \$1.50; fee to County Clerk, Monmouth County, \$8.50; lunch, \$1.00; bus-travel

from Freehold to Trenton; \$1.00; fee to Secretary of State, New Jersey, \$29; taxi in Trenton, 60 cents; thence to New York, 60 cents; fare Trenton to New York, \$2.16; total, \$44.39.

230 Q. And Mr. Smith paid out \$44.39 and charged Innisfail that amount, is that right?—A. Yes; that is correct.

Q. The next debit item is June 21, Federal and State transfer tax stamps, \$200.48. What was that?—A. Well, charged to the cash book June 21, 1926, to the Innisfail Corporation, Empire Trust Company, United States and New York stock transfer stamps, \$200.48.

Q. Do you have a check for that amount?—A. I think there is a check for it.

The COURT. Were those stamps used in connection with the transfer of this original block of Chrysler to stock the corporation?

The WITNESS. I believe they were, your Honor; although I was not with Mr. Smith at that time. In 1926 I am pretty sure that that is what the stamps were for.

Q. Will you please find the check?—A. I believe those checks were—the check is—I believe was put in evidence in the other tax case.

Q. Will you read the stub?—A. Empire Trust, June—

Q. Whose check book is that?—A. This is Mr. Smith's check book.

Q. All right.—A. June 21, 1926, Empire Trust Company, United States and New York State transfer tax stamps, Innisfail Corporation, \$200.48.

Q. The next item, Mr. Doty, is June 23, minute book of stockholders, \$12.75.—A. Well, that was a payment to Broun, Green & Company for minute book, stock letters, and so forth, \$12.75.

Q. That is for the Innisfail minute book?—A. Innisfail Corporation; yes.

Q. Mr. Smith paid for it?—A. Yes.

Q. And charged Innisfail with \$12.75?—A. Yes.

231 Q. Do you have the stub for the check?—A. I have the check here.

Mr. SHER. Plaintiff offers in evidence check dated June 23, 1926, to the order of Broun, Green Company, signed J. T. Smith, in the amount of \$12.75.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit No. 35.")

Q. The next item is July 7, 1926, stock certificate and stock ledger \$10.50.—A. That was also a payment to Broun, Green for the stock certificate books.

Q. And the stock ledger of Innisfail Corporation?—A. And the stock ledger of Innisfail Corporation.

Q. Do you have the check for that?—A. Yes.

Mr. SHER. Plaintiff offers in evidence check dated July 7, 1926, to the order of Broun, Green & Company, \$10.50, signed J. T. Smith.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit No. 36.")

Q. Mr. Doty, the next item is March 15, 1927, cash \$20,000. What was that?—A. Cash advanced from Mr. Smith to the Innisfail Corporation.

Q. What entry do you have on that?—A. I have a cash book entry charging Innisfail Corporation.

Q. With that \$20,000?—A. \$20,000.

Q. And do you have a check for that?—A. I believe that check was also used as an exhibit in the former tax case.

Q. In the Board of Tax Appeals?—A. In the Board of Tax Appeals.

Q. Do you have a stub there?—A. March 15—

232 Q. From whose check book are you reading?—A. John T. Smith, March 15, Central Mercantile Bank and Trust Company, to open account of Innisfail Corporation, \$20,000.

Q. Do you remember what the purpose was of that advance by Mr. Smith of \$20,000 to Innisfail? What the circumstances were, do you know?

Mr. PRATT. I object.

Mr. SHER. I withdraw the purpose.

Q. What were the circumstances?—A. I believe the Innisfail Corporation required some money to have to pay taxes, and so forth.

Q. Did they have any other cash?—A. No; I don't think so, at that time.

Q. The next item is June 15, 1927, cash \$15,000. What do you have on that?—A. That check is also or was also used as an exhibit in the Board of Tax Appeals.

Q. Read from your stub.—A. Mr. Smith's check book June 15, 1927, Innisfail Corporation on account, \$15,000.

Q. August 2, 1927, an item of \$5,000 cash.—A. Mr. Smith's check book August 2, 1927, Innisfail Corporation, Central Mercantile Bank and Trust Company, \$5,000. That check is also with the Board of Tax Appeals.

Q. Next August 15, purchase of 15 shares of White Knob Copper & Development Company preferred, \$11.25.—A. Well, the check is for \$11.17, 8 cents transfer tax, which was paid by the petty cash, which makes \$11.25.

Q. Do you have a check there?—A. I have a check for \$11.17; yes, sir.

Mr. SHER. Plaintiff offers in evidence check dated August 15, 1927, to the order of Bankers Trust Company in the amount of \$11.17, signed J. T. Smith.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit No. 37.")

233 Q. What was the next item?—A. August 31, 1927.

Q. All right. August 31, 1927, purchase 500 shares White Knob Copper & Development Company preferred \$375, and the same date purchase 500 shares Argonaut Consolidated Mining Company \$375.—A. Well, that was a journal entry in Mr. Smith's book under

date of August 21, 1927, charging the Innisfail Corporation with the purchase of 500 shares of Argonaut Consolidated Mining Company for \$375 and 500 shares of White Knob Copper & Development Company preferred \$375.

Q. Mr. Smith had paid out the \$375 in each case, had he?—A. Yes.

Q. Do you have the checks for that?—A. Yes.

Q. I hand you a check for \$747 and ask you to explain the amount.—A. That was for the purchase of 500 shares of Argonaut Consolidated Mining Company and 500 shares of White Knob preferred in the sum of \$750, less transfer tax of \$3.00.

Mr. SHER. Plaintiff offers in evidence check dated August 1, 1927, to the order of Bankers Trust Company in the amount of \$747, signed John T. Smith by Henry M. Hogan, attorney.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit No. 38.")

Q. Mr. Doty, the next item is August 31, 45 cents.—A. That was miscellaneous carfare disbursement, petty cash, by Mr. Smith for the account of Innisfail Corporation.

Q. Mr. Smith paid out and charged to Innisfail?—A. That is correct.

Q. The next item is on September 15, 1927, cash for \$17,500. What was that?—A. That was a cash advance to Innisfail Corporation by Mr. Smith, \$17,500.

234 Q. Do you have a check for that?—A. That check is also with the Board of Tax Appeals in the former suit.

Q. What does your stub say and in whose check book?—A. Mr. Smith's check book, dated September 14, 1927, Innisfail Corporation on account, Central Mercantile Bank and Trust Company on account \$17,500.

Q. What entry did you make in the Innisfail book on that item?—A. In the Innisfail cash book would be receipt—is a receipt on September 14, crediting John T. Smith on account \$17,500.

Q. The next item is December 2, cash \$15,000. Do you have your check for that?—A. What is the amount of that?

Q. \$15,000, December 2, 1927.—A. Cash book. 425 December, on the check book of Mr. Smith December 2, 1927, Innisfail Corporation on account \$15,000, check with the Board of Tax Appeals.

Q. The next item is December 5, purchase 500 shares Gillette Safety Razor Company, \$49,750. What do you have on that?—A. I have a journal entry in Mr. Smith's journal under date of December 5, 1927, Innisfail Corporation debit \$49,750, Gillette Safety Razor Company, \$49,750, sold to Innisfail Corporation 500 shares of that Safety Razor common stock at \$99.50, voucher as per bill of sale on file.

Q. The next is December 14, cash \$15,000.—A. That check is also with the Board of Tax Appeals, in the stub of Mr. Smith's check book December 14, 1927, Innisfail Corporation on account \$15,000.

Q. Next item, Mr. Doty, is December 21, purchase of 1,700 shares of Gimbel Brothers, \$68,000. What was that?—A. That was a sale to Innisfail Corporation December 21, 1927, journal entry Innisfail

Corporation debit \$68,000 to Gimbel Brothers, Inc., and \$38,000, sold to Innisfail Corporation 1,700 shares Gimbel Brothers common stock, \$40 a share, bill of sale on file.

Q. Next, December 31, petty cash disbursements 71 cents.—

35 A. Sundry petty cash paid Mr. Smith for the account of Innisfail Corporation and charged to their account.

Q. Let us look at the credit side of 1926 and 1927 and again we see a dividend on 26,447 shares of Chrysler stock.—A. Yes.

Q. Will you state whether or not those dividends were received the same as the other dividends that you have described and whether you have made the same entries in Mr. Smith's book and the Innisfail Journal?—A. Well, in 1926, the two dividends recorded here were not made by the—the entries were not made by me. In 1927 there were four receipts of dividends on Chrysler Corporation, credit through the cash book, Mr. Smith, and Innisfail Corporation through the journal of the Innisfail Corporation, debited to Mr. Smith and credit to income from dividends, Chrysler stock.

Q. In the same way?—A. In the same way.

Q. As the other entries which you have read?—A. Yes.

Q. Now, then, we have December 23, 1927, a cash credit item of \$20,000. What was that?—A. Receipt by Mr. Smith from Innisfail Corporation of \$20,000 December 23rd.

Q. Do you have a check for that?—A. At the end—that was drawn on the Central Mercantile Trust Company. I do not seem to have their records. I don't know whether they were kept or not.

Q. What book entry do you have?—A. I have a cash book entry.

Q. Will you read that?—A. In the cash book of Innisfail Corporation disbursements December 22, 1927, John T. Smith on account \$20,000.

Q. Mr. Doty, as a result of these debits and credits in the account between Mr. Smith and Innisfail Corporation, what was the state of the account between Mr. Smith and Innisfail Corporation just before the time Mr. Smith sold the securities to Innisfail Corporation in December, 1932?—A. I would say that Innisfail owed Mr. Smith \$68,364.68.

236 Q. And what was the total—

The COURT. By "just before" do you mean December 28, 1932?

The WITNESS. Yes.

The COURT. What was the balance, please?

The WITNESS. \$68,364.68.

Q. And what was the total purchase price of all the securities which Mr. Smith sold to Innisfail on December 29, 1932?

Mr. PRATT. Excuse me. I did not get that question.

2 Mr. SHER. Total purchase price of all securities which Mr. Smith sold to Innisfail, what Mr. Smith testified he sold to Innisfail in December.

The WITNESS. \$60,923.80.

Q. And what is the final item in 1932 on the debit side?—A. The account was balanced by check of \$7,440.88, paid by Mr. Smith to Innisfail Corporation.

Q. And that brought the account to balance, you say?—A. Yes.

Q. How long did you continue to maintain on your books an account between Mr. Smith and Innisfail Corporation?—A. Whenever there were any transactions between Mr. Smith and Innisfail Corporation they were recorded.

Q. Do you still have a running account today?—A. I think the account—I believe it is closed now.

Q. When was it closed?—A. I believe it was closed November 24th by a cash payment.

Q. What date?—A. November 24, 1937, there was a payment to Innisfail Corporation of \$99,000, which balanced the account.

237 Q. Mr. Doty, when did Mr. Smith buy the 500 shares of Electric Auto-Lite Company stock which he testified he sold to Innisfail Corporation on December 29, 1932?—A. He paid it—or rather he bought October 10th, 1930.

Q. And how much did he pay for those shares?—A. \$19,575.

Mr. PRATT. I move to strike that answer out. The best evidence of the payment is the checks themselves. He is not qualified to testify to that.

Mr. SHEP. I am asking him to say what his books show.

The COURT. He may state what the records show. What was the cost according to the records?

The WITNESS. The cost was nineteen thousand—

Mr. PRATT. May I have an exception?

The COURT. Yes.

The WITNESS. \$19,575.

Q. When did Mr. Smith buy the 500 shares of Firestone Rubber Company stock which he testified he sold to Innisfail Corporation on December 29, 1932?—A. He bought 75 shares September 10, 1928, 25 shares August 30, 1928, making 100.

Q. And how much did he pay for those shares?—A. Seventeen thousand—

Mr. PRATT. Just a minute, please. My objection goes to this line of testimony with respect to this type of question in connection with these sales of stocks, your Honor.

The COURT. I think you better make your objection to each question. The question in each case, as I understand it, is what did Mr. Smith's records indicate as to the date of the purchase of various securities. We have 100 Firestone, but there was 500 Firestone in evidence, wasn't there?

238 The WITNESS. There was an exchange, your Honor, in December 1929. The 100 shares were exchanged for 500 new shares.

The COURT. That is, the Firestone issued five for one, is that it?

The WITNESS. That is correct.

The COURT. What is the cost price of the 100 shares?

The WITNESS. \$17,525.

Q. When did Mr. Smith buy the 332 shares of Gaynor Electric stock which he testified he sold Innisfail in December, or December 29, 1932?

Mr. PRATT. May my objection to the previous question and answer be allowed, your Honor, and an exception noted?

The COURT. I thought I had ruled on it. The objection is overruled with exception.

Mr. PRATT. May I make the same objection in respect of this question?

The COURT. Surely.

By the COURT:

Q. Gaynor Electric. What do the records show?—A. Gaynor Electric, he paid—

Q. When?—A. January 2, 1930, \$25,000 for 166 shares, on January 27, 1930, \$25,000 for 166 shares.

Mr. PRATT. May I again, your Honor, record an exception?

The COURT. Yes. You make your objection to the question.

239 Mr. PRATT. I object.

The COURT. The objection is overruled.

By Mr. SHER:

Q. That is a total cost of \$50,000, isn't it?—A. Yes, sir.

Q. When did Mr. Smith buy the 1,553 shares of Investrad Corporation stock which he testified he sold to Innisfail on December 29, 1932?—A. Well, that was purchased over various dates, from May 1, 1929, to October 8th, 1930.

Q. How much did he pay for those shares?

Mr. PRATT. I object to that question, your Honor.

The COURT. Same ruling.

Mr. PRATT. Exception.

A. \$33,498.65.

Q. When did Mr. Smith buy the 18,324 shares of National Baking Company stock which he testified he sold to Innisfail Corporation on December 29, 1932?

Mr. PRATT. May I object to that question?

The COURT. Same ruling.

Mr. PRATT. Exception.

A. That was purchased at various dates from March 15, 1926, to December 16, 1930.

Q. And how much did he pay for those shares?

Mr. PRATT. I object to that question, your Honor.

The COURT. Same ruling.

Mr. PRATT. Exception.

A. \$87,528.66.

Q. When did Mr. Smith buy the 800 shares of National Sugar Refining Company which he testified he sold to Innisfail Corporation on December 29, 1932?

240 Mr. PRATT. Objection, your Honor.

The COURT. Same ruling.

Mr. PRATT. Exception.

A. That was purchased November 1st, 1926, 200 shares for the sum of \$15,875—

Q. Just a moment.—A. \$25,875.

Q. 200 shares?—A. 200 shares in November 1928, that was exchanged for 800 new shares.

The COURT. The cost was what?

The WITNESS. \$25,875.

The COURT. Is this a convenient place to adjourn?

Mr. SHER. Just two more securities, your Honor.

The COURT. All right.

Q. When did Mr. Smith buy the 2,000 shares of General Motors Corporation which he testified he sold to Mrs. Smith on December 29, 1932?

Mr. PRATT. Objection, if your Honor please.

The COURT. Same ruling.

Mr. PRATT. Exception.

A. October 28, 1929.

Q. How much did he pay for those shares?

Mr. PRATT. Objection.

A. \$104,350.

The COURT. Just a moment. How much was that?

Mr. PRATT. I would like a ruling on this, your Honor.

241 The COURT. The objection is overruled.

Mr. PRATT. Exception.

The COURT. What is the cost price?

The WITNESS. \$104,350.

Q. When did Mrs. Smith buy the 117 shares of Standard Oil of Indiana stock which Mr. Smith testified he bought from her on December 29, 1932?

Mr. PRATT. Objection, if your Honor please.

The COURT. Same ruling.

Mr. PRATT. Exception.

A. That was purchased—she originally held 100 shares of Pan-American Petroleum B stock, purchased October 1, 1923, and in exchange for that 100 shares of Pan-American Petroleum B, she received 117 shares of Standard Oil of Indiana, November 30, 1929.

Q. How much did she pay for the Pan-American stock?

Mr. PRATT. I object to that question, if your Honor please.

A. Five thousand—

Mr. PRATT. Just a moment.

The COURT. Same ruling.

Mr. PRATT. Exception.

A. \$5,215.

The COURT. We will adjourn until tomorrow morning at 10:30.

I must remind you of what I have said heretofore. Do not let any person speak to you about this case or communicate with you directly or indirectly; do not discuss it among yourselves or

try to decide it until it is submitted. We will resume tomorrow morning at 10:30.

Mr. SHER. Will your Honor instruct the witnesses to please return tomorrow morning?

The COURT. Yes; but the clerk will do that.

(Adjourned to March 25, 1938, 10:30 o'clock A. M.)

NEW YORK, March 25, 1938, 10:30 A. M.

Trial resumed

Willard Doty resumed the stand.

— Direct examination (continued) by Mr. SHER:

Q. Mr. Doty, you testified yesterday that Innisfail Corporation had purchased securities from time to time from Mr. Smith?

Mr. PRATT. I object to the form of the question, if your Honor please; the word "purchased" calls for a conclusion.

The COURT. Well, suppose you strike it out and do not refer to the previous testimony. Just ask him a question.

Q. Did Innisfail Corporation later sell any of those securities?

Mr. PRATT. Same objection, if your Honor please.

The COURT. If you will say any securities it acquired from Mr. Smith.

243 Q. It acquired from Mr. Smith, very well. A. Yes; they did.

Q. What happened to the proceeds?—A. Deposited in the bank account of the Innisfail Corporation.

Q. Mr. Doty, were all the books and records to which you have referred in court made available to the Internal Revenue agents when Mr. Smith's returns were examined?—A. I believe they were. Anything they asked for I gave them.

Q. Is the Internal Revenue Agent who examined Mr. Smith's 1932 return in court?—A. He is.

Q. Can you point him out?—A. Mr. Jacobs over there (indicating).

Q. Is the Internal Revenue agent who examined Mr. Smith's 1931 return in court?—A. Yes; I believe, Mr. Weiss.

Q. And did he examine any other years of Mr. Smith's?—A. I think he examined 1929 and 1930.

Q. Mr. Weiss?—A. I think so; I am not sure.

Q. And is the agent who examined Mrs. Smith's 1932 return in court?—A. I think Mr. Jacobs examined Mrs. Smith's return in 1932.

Mr. SHER. Your witness.

Cross examination by Mr. PRATT:

Q. Now, you have had considerable experience in preparing income tax returns, haven't you, Mr. Doty?—A. Yes; I have had quite a bit of experience.

Q. You testified on direct examination that you prepared the Innisfail Corporation tax return, as well as the tax returns of Mr. and Mrs. Smith?—A. Yes.

Q. From 1927 on?—A. I prepared the return for the year 1927 for Innisfail.

Q. Now, have you with you the books of Innisfail Corporation?—

A. Yes, sir.

244 Q. For the purpose of refreshing your memory as to a certain transaction?—A. Yes, sir.

Q. Now, going back to the year 1926, tell us how much profit was realized by Innisfail Corporation as the result of the exchange of the 5,005 shares of Chrysler Preferred for 26,477 shares of Common in the year 1926?

Mr. SHER. I object to that as incompetent, irrelevant, and immaterial, calling for a conclusion of the witness, outside the scope of proper cross examination, too remote, prejudicial.

The COURT. I do not believe it can be outside the scope of cross, in view of the very careful examination on direct examination of this witness with respect to the 1926 dealings of the corporation. I think you opened the door to cross examination.

Mr. SHER. Well, it is improper cross examination to ask him as to a profit made by the corporation.

The COURT. Perhaps the question is objectionable in form inasmuch as it assumes there was a profit. You might ask the witness if that transaction resulted in a gain or a loss:

Q. With that amendment to the question, did that transaction result in a gain or loss?—A. Yes; it did; a gain.

Mr. SHER. Same objection.

The COURT. Same ruling.

Mr. SHER. Exception.

Q. Now, how much was that profit?

Mr. SHER. Same objection.

The COURT. Same ruling.

Mr. SHER. Exception.

A. I think it was about \$515,000.

245 The COURT. Gain?

The WITNESS. Gain, yes; realized through an exchange of stock.

Q. And you also received as income in that year \$39,715.50 all dividends on the Chrysler stock, did you not? You can refer to your transcript on that.

Mr. SHER. Same objection, if your Honor please.

The COURT. Same ruling.

The WITNESS. \$39,715.50 for the year 1926.

Q. Making a total income with respect to that Chrysler stock of \$556,125.63, isn't that correct?

Mr. SHER. Oh, I object to that, your Honor. It is a misleading question, "total profit on Chrysler stock," and he includes dividends and the transactions involving the Stock Exchange.

Mr. PRATT. I say income.

The COURT. Well, it is not income, is it? It might be a question of a gain in part and income in part. Perhaps you better show that the total of those two figures without characterizing is a certain amount of money.

Q. The total of those two figures, Mr. Doty, is in the sum of \$556,125.63?—A. Approximately that; yes.

Q. Then the corporation paid a tax in that year of how much?

Mr. SHER. I object to that, your Honor, as irrelevant and immaterial, what tax Innisfail Corporation paid, six years prior to the year in issue.

The COURT. Well, I still say I think you opened the door to cross-examination on the corporate transactions in 1926 because you went into them very carefully on direct.

Mr. SHER. Well, if your Honor please, it was necessary to show that Mr. Smith owed Innisfail Corporation \$68,000 in 1932 when he sold them the securities and in part cancellation of the debts. We had to show that to prove the consideration for that sale in 1932, which was the transaction in issue. Therefore it was collateral to the matter at issue, but I do not see how that opens the door to the defendant to go into the income-tax return of Innisfail Corporation back in 1926.

The COURT. I think the corporation transactions for 1926 are properly before the jury at the present time. It may not enter into the final deliberations of the jury at all and I am not criticising you for having done it, but I merely say that having opened that subject I think cross-examination is appropriate. That is all.

Mr. SHER. Well, it simply occurs to me, your Honor, that it will be interminable if we are going into every independent transaction of the corporation that is not directly involved in the issue here. What difference does it make to the determination of the question whether Mr. Smith sold stock to Innisfail Corporation in 1932 to show how much Innisfail Corporation paid as income tax in 1926, and how they computed their return in 1926? I am arguing at length now in order to take care of the subsequent transactions which apparently counsel will try to introduce.

The COURT. Well, I am frank to say that I am not sure that it has any bearing on it, but equally I am not sure that it has no bearing. Therefore I will overrule the objection.

Mr. SHER. Exception.

The WITNESS. \$69,679.17.

247 Q. And at that time it had no bank account, did it?

Mr. SHER. At what time?

Mr. PRATT. In 1926.

The COURT. At the end of 1926. I think the testimony is that the bank account was opened in 1927.

Q. In 1927?—A. It had a bank account when it paid the tax.

Q. Yes. That was in 1927?—A. Yes.

Q. Now, the taxes were paid in that year with moneys furnished by John Thomas Smith, isn't that correct, looking at those advances there of March?—A. Whatever the source of money was came from Mr. Smith.

Q. Now, you were familiar with surtax rates and the normal tax rates in that year, were you not?—A. I was at that time.

Mr. SHER. I object to that, your Honor, the surtax rates and the normal tax rates speak for themselves as a matter of law.

The COURT. The question is whether he was familiar with them. I think he is the only person who knows whether he was.

Mr. SHER. Exception.

The WITNESS. At that time I was familiar with them; yes.

Q. And you know, do you not; that as a result of reporting the gain on the Chrysler exchange and the fact that the dividends on the Chrysler stock were not taxable, Innisfail Corporation with John Thomas Smith saved approximately \$67,000 in taxes for the year 1926?

248 Mr. SHER. I object to that, your Honor, as a wholly improper question, calling for the conclusion of the witness, asking him to state as a result of the transactions the difference between the law applying to individuals and the law applying to corporations.

The COURT. Yes; I think your question is objectionable in form. What you probably mean to ask the witness is to compare a tax which would have been payable by an individual under a given state of facts with a tax payable by a corporation under the same state of facts. That comparison can be made by a person familiar with the law. I do not think it is proper for you to ask the witness to draw the conclusion that because certain things have been done in a certain way, therefore a certain result follows.

Mr. PRATT. I withdraw the question.

Q. On that sum of \$556,125.63, how much would an individual have been compelled to pay in income tax in the year 1926?

Mr. SHER. I object to that as hypothetical, calling for a conclusion of the witness, having no bearing on the issues of this case—

Mr. PRATT. If your Honor please—

Mr. SHER. The relation might be entirely different in the case of an individual.

Mr. PRATT. If your Honor please—

Mr. SHER. He may not have sold the stock to the corporation, in the first place.

Mr. PRATT. If your Honor please, it may well be, and undoubtedly is a matter for argument, but if we are going to ask this Court and jury to refer to all the exhibits in this case and do the several problems of arithmetic, necessarily it is imposing a burden that is unnecessary. Here is a tax specialist who prepared the return of John Thomas Smith and Innisfail and the rest of them, and he can give the answer very, very quickly with respect to these transactions.

The COURT. Objection overruled.

Mr. SHER. May I just add, your Honor, Mr. Smith might have sold the stock to someone else. It just does not follow that you can compare the tax paid by Innisfail Corporation with another situation that simply did not exist.

Mr. PRATT. It does in this case.

The COURT. I suggest that you ask the witness to assume the following state of facts: (a) an individual receives a gain through an exchange of securities totalling \$516,000, and he receives in dividends \$39,000 plus, and that those two items constitute his entire income, do you know what the total tax is that he would have to pay?

Mr. SHER. If your Honor please, I hate to persist in my objection, but I must object to that as calling for a conclusion.

The COURT. Yes; it does call for a conclusion, and I am not sure that it is not the kind of a conclusion that this jury is entitled to have drawn. Do you know what tax an individual would pay substantially under those circumstances?

Mr. SHER. May I have an exception?

The COURT. Surely.

The WITNESS. I could not say what the tax would be.

The COURT. In round figures.

The WITNESS. It probably would be around—well, over \$100,000. I would say. I don't remember what the rates were in 1929. I would have to compute it. I know that the individual tax on that sum would be much greater than for a corporation.

250 The COURT. Well, are you able to state roughly or substantially how much greater?

Mr. SHER. Same objection, if your Honor please.

The COURT. Surely.

Mr. SHER. And an exception.

The WITNESS. Well, I would say that the tax probably would be around \$100,000 or more. It might be \$200,000.

Q. You, of course, in making that calculation would have to have in mind the normal surtax rates that existed in that year, wouldn't you?—A. Yes, sir.

Q. Now, using that refresh your recollection, will you compute the actual amount?

Mr. SHER. Same objection, your Honor, and I think we are beginning to see now how improper this type of examination is. The witness is interpreting the law. He may be a tax expert and I might say that the testimony does not show that, but he certainly can't testify as an expert on tax laws and in this court no one could give such testimony. I do not see the possible propriety of this kind of testimony. I think it is prejudicial, calling for a conclusion, irrelevant, immaterial, outside of the scope of proper cross-examination. I must continue to make those objections, your Honor.

The COURT. I think you are entirely justified in making your objections. I think that your duty to your client requires it. However, I am going to overrule it.

Mr. SHER. Exception.

The WITNESS. Well, according to my computation it would be around \$101,000 based on an income of \$550,000.

21 Q. Well, it would be 5% normal tax and 20% surtax?—

A. I am taking the surtax of 20% on \$500,000, and that would be \$91,000, and the surtax of 20% on \$50,000 would be \$10,091.

Q. Why, don't you know that in that year the dividends were taxable by individuals?

The COURT. 1932?

Mr. PRATT. 1926.

Mr. SHER. I object to that as calling for a conclusion, your Honor, and I think it again shows the impropriety of this question.

Mr. PRATT. In 1926.

The COURT. In 1926 only for the purpose of surtax.

Q. Well, did you—A. I took \$550,000, and approximately that would be \$101,000. The normal tax—what was the normal tax in that year 1926?

Q. Five per cent.—A. Pardon?

Q. Five per cent.

Mr. SHER. Same objection.

A. Well, that would be \$25,000—well, \$126,000 approximately.

Q. Yes. Now, Mr. Doty—

Mr. SHER. Could I have a ruling?

The COURT. Yes; I am overruling the objection.

Mr. SHER. Exception.

The COURT. Do not ask the witness to draw any conclusion, please.

Mr. PRATT. Yes.

Q. So that the tax for the corporation was \$69,000?

252 Mr. SHER. Same objection.

The COURT. That already appears.

Q. And the total sum of your computation just made was in the sum of \$127,000?—A. About that.

Mr. SHER. The same objection.

The COURT. Same ruling.

Mr. SHER. Exception.

Q. Now, going to the year 1927. The corporation, Innisfail Corporation, in that year received dividends of approximately \$79,000. Isn't that so?

Mr. SHER. Same objection, if your Honor please.

The COURT. Doesn't that already appear? Doesn't that already appear from the testimony?

Mr. PRATT. Yes; on the direct examination.

Mr. SHER. I object to that as repetitions.

The COURT. I do not think that is a good objection. This is cross-examination on income from dividends, and that was how much?

The WITNESS. \$79,431.

Q. And the Innisfail Corporation paid no tax on that income, did it?

Mr. SHER. I object to that.

Mr. PRATT. And the year 1927.

Mr. SHER. I object to that for the same reasons.

The COURT. I will allow the question. Objection overruled.

Mr. SHER. Exception.

A. 1927?

Q. Yes.—A. No; there was no income tax paid for the year 1927.

253 Q. Now, if that income had been received by an individual, how much tax would have been payable by that individual for the year 1927?

Mr. SHER. Same objection, your Honor, and also because it calls for a conclusion about facts not in evidence, about a purely hypothetical situation which may never have existed in this case.

The COURT. I wonder if in making that objection you are recalling the testimony that Mr. Smith gave upon the witness stand, in questioning by you, as a result of which he compared the income tax payable by a corporation, and the income tax payable by an individual, and which he said, in effect, that he had that situation clearly in mind in conducting the affairs of Innisfail Corporation, in organizing it, and maintaining it.

Mr. SHER. Yes, your Honor; that was one of his purposes, because he stated that was the law, but I don't see how it follows that counsel can ask the witness how much Mr. Smith would have paid if he had not done something which he did, if he had not sold the stock.

The COURT. That is not the pending question at all. The pending question is this: how much would the surtax have been to an individual on dividends amounting to \$79,000?

Mr. SHER. And there is no evidence that the individual received such dividends, so it is a purely hypothetical question.

The COURT. It is a hypothetical question, and I think it calls for information to supplement the testimony that is already in the case. I am overruling the objection.

Mr. SHER. Exception.

The WITNESS. The surtax on \$80,000 would have been \$7,860.

254 Q. The surtax would have been \$7,000?—A. According to your tables here.

Q. What is the rate applicable?

Mr. SHER. Same objection to asking the witness what the rate applicable was.

The COURT. Overruled.

Mr. SHER. Exception.

A. I am taking your figure from the table, 18 per cent on \$80,000.

Mr. SHER. Just a minute, Mr. Doty.

The COURT. He is asking what factors the witness took into consideration in making his answer. That is what he is asking.

Mr. SHER. He is asking what the rate is.

The COURT. That is one of the factors that he put to him in the form of the question. You would not object to that, would you?

Now, he is doing the same thing. In other words, he is saying, how do you reach that conclusion, and he has a right to ask a witness that.

Mr. SHER. May I have an exception?

The COURT. Surely.

Q. Now, assuming that the individual had had an income of \$10,000 for the year 1927, how much would the surtax be?

Mr. SHER. Same objection, your Honor.

The COURT. Are you getting into different ground now? Aren't you getting beyond the scope of your cross examination?

Mr. PRATT. Probably it is argumentative, your Honor. I will withdraw the question.

255 Q. Now, for the year 1928, Mr. Doty, there were dividends in that year received by Innisfail totalling \$83,990; isn't that correct?—A. Approximately; yes.

Q. And there were profits on a sale of Gimbel's stock?—A. Yes.

Q. And Gillette?—A. Yes.

Q. So between the dividend and the profit on the sale of those two stocks there was a gain of net income of \$100,778; isn't that so?—

A. Well—

Q. Approximately \$100,000?—A. \$100,000; right.

Q. Now, the corporation paid no tax on this \$100,000 in dividends, did it?

Mr. SHER. Same objection.

The COURT. Same ruling.

Mr. SHER. Exception.

A. They paid no tax on the dividends; no.

Q. Now, will you calculate the surtax that an individual would have had to pay on that income of \$100,778?

Mr. SHER. Same objection, your Honor.

The COURT. Same ruling.

Mr. SHER. Exception.

A. On \$100,000 it would be a surtax of \$11,660.

Q. Excuse me—How much was that?—A. \$11,660.

Q. Now, will you go to the year 1929? Do you have dividends in that year?—A. Yes.

Q. And how much?—A. Well, it would be around \$94,100.

Q. And the surtax on that is how much?

Mr. SHER. Same objection, if your Honor please.

The COURT. What year is this?

Mr. PRATT. 1929.

256 The COURT. What would the individual surtax have been on \$94,000; is that the question?

Mr. PRATT. Yes, sir.

Mr. SHER. Same objection, your Honor.

The COURT. I will allow it.

Mr. SHER. Exception.

A. A little over \$10,000.

Q. \$10,000 in surtax?—A. A little over that.

Q. Now, I show you Government's Exhibit C for Identification, the income-tax return of John Thomas Smith for 1929, and ask you whether or not your signature appears thereon. (handing) ?—A. Yes, sir.

Q. That is, you notarized that?—A. Yes.

Q. Did you prepare the return for that year?—A. Probably.

Q. Don't you know?—A. I am sure I did; yes, sir.

Mr. PRATT. I offer in evidence Government's Exhibit C for Identification.

Mr. SHER. Objected to as incompetent, irrelevant, and immaterial, outside the issues of the case.

The COURT. May I see it a moment, please.

(Same handed to the Court.)

Mr. SHER. Remote and prejudicial.

The COURT. Perhaps I can't readily determine, but does this return reflect a sale of securities to the Innisfail Corporation by the individual?

Mr. PRATT. Yes, your Honor.

The COURT. That is a matter that I had in mind yesterday when I said that perhaps by asking those questions you had rendered this exhibit available to the Government.

Mr. SHER. Well, your Honor, I think I said at the time that it was necessary to prove how the indebtedness was created between
257 Mr. Smith and Innisfail, but that that did not open the door to the inclusion of the personal income-tax liability of Mr. Smith, which, in the first place, involves a whole lot of other transactions in 1929, and, in the second place, even as far as those transactions are concerned, the income-tax liability on his sales to Innisfail are not in issue in this case. We are not trying the 1929 income-tax return, and it certainly is remote and prejudicial.

The COURT. Why is it prejudicial?

Mr. SHER. Because it is bringing in the income tax issues of another year, and we are trying 1932 in this case.

The COURT. Well, I think I shall admit the document in evidence, but I will instruct the jury that if you look at this exhibit you are to do it only in connection with Mr. Smith's testimony that during the year 1929 he individually sold some securities to the Innisfail Corporation, and this return is not admitted because it may tend to throw light upon the question at issue here, which has to do with the tax paid by him in the year 1932. I hope that is clearly understood. With that in consideration the objection is overruled, and Defendant's Exhibit C for Identification is received in evidence.

Mr. SHER. May I have an exception?

The COURT. Surely.

(Defendant's Exhibit C for Identification received in evidence.)

Mr. SHER. Your Honor, may I add one word? If the purpose of this is solely to establish the sale by Mr. Smith of securities in 1929 to Innisfail Corporation, that is the same thing which we ourselves have proved, and I don't see that it is necessary for the Government to reinforce our proof.

258 Mr. PRATT. But it is necessary for the Government to examine into all the details of the direct case.

Mr. SHER. Well, if it is merely to bear out that transaction, it is agreed here that Mr. Smith sold securities to Innisfail in 1929. We proved that ourselves.

The COURT. And as I see it, the Government has the right to show anything that it may be able to show from this return concerning that transaction. Now please except to the ruling, and when you have stated your exception your rights are preserved.

Mr. SHER. I think I have an exception in the record.

Q. Now, referring, Mr. Doty, to Defendant's Exhibit C in evidence, to that schedule, which shows that a thousand shares of Aldebaran Corporation were sold by Mr. Smith. Do you see that?—A. Yes; it does.

Q. And on that there is a loss of how much claimed?

Mr. SHER. Same objection to that, your Honor.

The COURT. Doesn't it speak for itself? Doesn't the return speak for itself?

Mr. PRATT. It does. Just to illustrate that particular bond.

A. I couldn't—

Mr. SHER. Just a moment, Mr. Doty.

The COURT. Let me see it, please.

(Document handed to the Court.)

The COURT. Well, it is pretty difficult to see what this shows, I think. I can't tell whether that is reported as a gain or a loss, because the figure indicates a loss of \$39,240, it looks like.

259 Mr. PRATT. The photostatic copy does not take the red figures, your Honor.

The COURT. That is the inference, that there is a loss of \$39,240. I will allow the witness to state what the exhibit indicates.

Mr. SHER. Exception, please.

The COURT. As to that item.

The WITNESS. It indicates a loss approximately of \$39,000.

Q. It does not state on the return that the security was sold to Innisfail Corporation, does it?

Mr. SHER. I object to that. The return speaks for itself.

The COURT. I will allow it.

Mr. SHER. Exception. Also, I object to it on the ground it is irrelevant and immaterial.

The COURT. All right. Your exception is noted.

The WITNESS. No; the return does not require to state to whom—

Mr. PRATT. Will you please answer my question?

Mr. SHER. Let him answer.

Q. It was a sale of that stock, was it not?—A. Yes.

Q. Now, do you see a sale of 1,900 shares of Hudson Motors?

Mr. SHER. Same objection, your Honor.

The COURT. Overruled.

Mr. SHER. Exception.

The WITNESS. 1,900 shares of Hudson Motor Car Company, did you say?

Q. On which a loss—A. It does not say the number of shares. It does not say the number of shares.

260 Q. Well, do you have any doubt at all in the world as to the number of shares?

Mr. SHER. I object to that, your Honor.

The COURT. Do not ask him that. Can you tell from the return? That is the question. Can you tell?

The WITNESS. Not from the return.

Q. Have you any independent recollection of that?—A. I think he sold 2,000 shares in 1929.

Mr. SHER. I object to that, your Honor.

The COURT. Did Mr. Smith's testimony cover that?

Mr. PRATT. His own testimony covered that.

Mr. SHER. Let him refer to the record, your Honor. I think that is the best way.

Q. Well, you testified on direct examination yesterday, Mr. Doty, that in 1929 Innisfail Corporation purchased from John Thomas Smith 19 shares of Hudson Motors?—A. 1,900.

Mr. SHER. I object to that as not being in the record. 1,900 is all right.

Mr. PRATT. Didn't I say 1,900?

Mr. SHER. 19, I think you said.

The WITNESS. I believe I did.

Mr. SHER. Just a moment.

Q. Well, have you any doubt—

The COURT. No.

Q. (Continuing.) That the 1,900 shares—

261 The COURT. Just a moment. Start over again.

Mr. PRATT. I will withdraw the question.

Q. Isn't that the same 1,900 shares that is indicated in that return with reference to the Hudson Motor stock?

Mr. SHER. I have to object to that, just for the purpose of the record, because here he is going into the income-tax situation.

The COURT. Objection overruled.

Mr. SHER. Exception.

Q. Is that the 1,900 shares that is referred to in this return?—A. I don't think so. I think that this refers to the 2,000 shares which were sold during the year 1929, and the 1,900 is included in that 2,000.

Q. So that the loss indicated there on the sale of 1,900 shares of Hudson or rather on the sale of the Hudson Motors stock is a loss on 2,000 shares; is that right?—A. That is right.

Q. Now, what would the loss be on 1,900 shares?

Mr. SHER. I object to that, your Honor, for the same reason.

The COURT. I will allow it.

Mr. SHER. Exception.

A. I couldn't say. I would have to compute it.

Q. Well, will you refer to your books, please, and see how much it shows?—A. About \$49,000 loss on the sale of 1,900 shares.

Q. On those two items there was a reported loss of approximately \$88,000; is that correct?

Mr. SHER. I object to that on the ground that the return speaks for itself and for the other reasons I previously urged.

262 Mr. PRATT. If your Honor please, can there be—

The COURT. Objection overruled.

Mr. SHER. Exception.

A. About \$88,000.

Q. And if an individual having experienced such loss of \$88,000, he would be entitled to a deduction of how much in tax for the year 1929?

Mr. SHER. Same objection, your Honor.

The COURT. Well, you are asking a pretty interested question. I think for the sake of clarity I will sustain the objection. The fact is that a loss appears on the return and it comprehends those two items, and that a loss of that size constitutes a deduction from the gross income tax, and the result is a reduction in the payment of the tax. Now that is the fact?

Mr. PRATT. That is the fact.

The COURT. But just what the reduction will be in dollars and cents, of course, on a rising scale as to rating the facts, and I think that is too intricate a computation to put up to the witness for present purposes.

Mr. PRATT. All right, your Honor.

Q. Referring to the year 1930, Mr. Doty, what were the dividends, according to your records, received by Innisfail Corporation for that year?—A. About \$92,000.

Q. And what would the surtax that an individual would have been required to pay amount to for that year?

Mr. SHER. Same objection.

The COURT. The same ruling.

Mr. SHER. Exception.

263 A. \$10,140 would have been the surtax on \$92,000.

Q. Now, referring to Plaintiffs' Exhibit 1, in evidence, the tax return for the year 1932—

The COURT. I do not think that you ought to leave the Innisfail Corporation situation for 1930 in thin air. The fact that an individual surtax on \$92,000 would have been a certain sum is only incomplete information.

Mr. PRATT. I will adopt your Honor's suggestion and ask him a further question.

Q. Were those dividends taxable to Innisfail Corporation for that year?

The COURT. The question is not framed properly. You mean would Innisfail—

Mr. PRATT. Pay any tax.

The COURT. Did they pay any tax on those dividends.

Q. Did they pay any tax on those dividends, Mr. Doty?—A. I don't think—

Mr. SHER. I object to that, your Honor.

The COURT. I will allow that question.

Mr. SHER. Exception.

A. (Continued.) I don't think corporations paid a tax on dividends for that year.

Q. I did not ask you about corporations. I asked you about Innisfail Corporation. Did it?—A. Innisfail is a corporation. No.

Q. It did not pay a tax?—A. Not on those dividends; no.

Q. Will you refer to Plaintiffs' Exhibit No. 1 in evidence, the income tax return of John Thomas Smith for the year 1932. Isn't that correct?—A. Yes.

264 Q. Now, in that return there are indicated various sales of securities on which losses were claimed, isn't that correct?

Mr. SHER. I object to that on the ground that the return speaks for itself.

The COURT. Objection overruled.

Mr. SHER. Exception, please.

The WITNESS. Yes, sir.

Q. Now, from your testimony of yesterday, you will recall that John Thomas Smith sold to Innisfail Corporation National Baking stock, Gaynor Electric, Iavestrad, Firestone, Electric Autolite, and National Sugar.—A. Yes.

Q. Now, have you something there which will show the aggregate of losses claimed by John Thomas Smith as a result of those sales?

Mr. SHER. I object to that.

A. You mean—

Mr. SHER. Just a moment. I object to that on the ground that the return speaks for itself and that the question is improper in form.

Mr. PRATT. All right.

Q. Mr. Doty, take your time and add those items up, please.

Mr. SHER. Wait a minute, now.

The COURT. I think you are right in saying that the return speaks for itself, but it requires some skill and interpretation to tell what the return does show. This gentleman is shown to have that skill and I will allow him to interpret the return in that respect for the benefit of the jury.

265 Mr. PRATT. That is the purpose of it, your Honor.

Mr. SHER. May I have an exception?

The COURT. Surely.

Q. The question is, what are the total losses due to the sale of securities shown in that return?—A. You mean the sale of securities to Innisfail Corporation?

Q. Yes, to Innisfail. Isn't it shown in this schedule?—A. Yes, approximately \$175,000.

Q. You prepared that tax return for Mr. Smith, did you not?—A. Yes; I did.

Q. And that sale to Innisfail Corporation resulted in the elimination of approximately how much of a tax?

Mr. SHER. Oh, I object to that.

Q. (Continuing.) By Mr. SMITH.

The COURT. I will sustain the objection. Please tell us what you say the total losses are from sales of any securities to Innisfail.

The WITNESS. About \$175,000.

Q. How much did you deduct as a capital loss?

Mr. SHER. I object to that on the ground that the return clearly shows that better than the witness can state it.

The COURT. I will allow it.

Mr. SHER. Exception, please.

Q. How much did you deduct as capital loss?—A. Well, it would be one-eighth of that, $12\frac{1}{2}$ percent, \$21,850.

Q. Then you did in that case calculate the amount of taxable income?—A. I beg your pardon?

Q. In preparing the return for 1932—A. Yes.

266 Q. You determined the amount of tax which Mr. Smith was liable for before the deduction of capital loss, isn't that correct?—A. Yes, that is the way you have to prepare it.

Q. That is the way it is done at all times?—A. Yes.

Q. And then after you arrive at that total, you deducted from that amount the sum of \$21,000, isn't that so?—A. Well, you deducted if there were capital losses of securities, and you deducted $12\frac{1}{2}\%$.

Q. Yes.—A. And you computed $12\frac{1}{2}\%$ of that loss, and deducted that from the ordinary—the tax on the ordinary income.

Q. Well, for the purposes of illustration, if a man had a taxable net income of \$50,000, and if he was liable or if the tax on his income was in the sum of \$50,000, he would be entitled to deduct from that tax $12\frac{1}{2}\%$ of any capital losses, isn't that so?

Mr. SHER. I object to that, your Honor, as calling for a conclusion on the part of the witness and improper cross examination.

The COURT. Well, it is perhaps a conclusion of the witness.

Mr. SHER. Hypothetical.

The COURT. But it is also an interpretation of this Exhibit 1. I think that it would tend to confuse the jury, however, by introducing a hypothetical case which is not present.

Mr. PRATT. All right.

The COURT. I think if you ask the witness if this Exhibit 1 reflects the net income, the computation of tax payable on the net income, the amount of the tax thus shown, and against that is shown the adjustment for capital gains and losses, you will accomplish your purpose.

Mr. PRATT. Thank you, your Honor.

267 Q. Will you answer that?—A. Yes, sir. It shows a tax on the ordinary net income before the capital losses.

Q. And that is in what amount?—A. \$69,028.04.

Q. And that is the amount that he would have had to pay if there were no capital losses; isn't that correct?—A. Yes.

Q. Then on the next line 37 you have a deduction for capital losses?—A. Yes.

Q. And that is in the amount of \$64,000?—A. Right.

Q. After that deduction the tax is represented as \$4,407.29?—A. Yes; that is right.

Q. Which is shown?—A. Yes.

Q. And that deduction of \$64,000, and approximately \$20,000—was that your answer?—A. \$21,000.

Q. \$21,000 was due to the sale of these securities to Innisfail Corporation?—A. Yes.

Q. There is also a deduction for a capital loss on the sale of 2,000 shares of General Motors to Mrs. Smith?—A. Yes.

Q. And the capital loss on that transaction is represented as \$79,000?—A. Right.

Q. And 12½% of that would be \$10,000 approximately?—A. Between nine and ten thousand.

Q. So that as a result of that sale the deduction for capital losses in the amount of \$64,000, included the \$10,000 capital loss on the sale to Mrs. Smith and the \$21,000 on the capital loss—A. That is right.

Q. On the sale to Innisfail Corporation?—A. Yes.

Q. Referring to Plaintiffs' Exhibit 24, the 2,000 shares of General Motors, in the name of Mary A. Smith. Mr. Doty, do you know whether or not there were stock powers physically attached to such certificates?—A. Those certificates which Mrs. Smith bought from Mr. Smith?

Q. Plaintiffs' Exhibit 24, the certificates in the name of Mary A. Smith?—A. Stock powers?

Q. Yes.—A. I don't think so.

268 Q. Now, haven't you on occasions seen at the office of General Motors stock powers signed in blank by Mrs. Smith?—A. We may have some up there signed by Mrs. Smith.

Q. Don't you have a regular supply of them up there, as a matter of fact?—A. We have quite a few powers signed by various people.

Q. By many people?—A. Quite a few, yes.

Q. Including stock powers signed by Mrs. Smith?—A. I couldn't say whether we have any signed by Mrs. Smith or not.

Q. Don't you know?—A. No, sir.

Q. Is it your answer that there was none?—A. I don't know. I can't remember whether we have any signed by Mrs. Smith or not.

Q. You don't know whether you have at this time?—A. Not at this time or any other time.

Q. You know you have had them in the past?—A. I am not sure.

Q. You never saw a stock power signed by Mrs. Smith in blank?—A. I wouldn't say I never—I don't remember.

Q. You don't remember?—A. No.

Q. Now, do you know whether or not, Mr. Doty, the Innisfail Corporation had in its own name a safe deposit box between June of 1926 and the end of 1933?—A. In its own name, it did not.

Q. You produced securities here yesterday which were sold to Innisfail Corporation in December of 1932. Do you remember the Firestone stock?—A. Sold to Innisfail Corporation?

Q. Sold to Innisfail Corporation.—A. Yes.

Q. Now, where did you get those securities?—A. We got them from our safe deposit box.

Q. I say, where did you get those securities?—A. Where did I get them?

Q. Yes.—A. When?

269 Q. Well, in order to bring them here into court?—A. We got them from the safe deposit box of the Innisfail Corporation.

Q. Well, didn't you produce them? Didn't you produce those securities here in court?—A. I had them here, yes, sir.

Q. And where did you get them?—A. Why, we—I got some of them from the safe deposit box of the Innisfail Corporation.

Q. Where is that safe deposit box?—A. In Jersey City.

Q. In Jersey City?—A. Yes, the Commercial Trust Company.

Q. How long have you had that safe deposit box in Jersey City?—

A. Since January—December 1935.

Q. December 1935?—A. Yes.

Q. And that is in whose name?—A. Innisfail Corporation.

Q. Were you a nominee of any stock for anybody during the years from 1926 to the end of 1933?—A. I don't think so, not—not before 1933, I don't think I was.

Q. Well, have you been nominee for anyone on any stock at any time?—A. Oh, yes, yes.

Q. Are you nominee for anyone now?—A. Yes.

Q. For whom?—A. Mr. Smith.

Q. On what kind of securities?—A. Caterpillar Tractor Company.

Q. Caterpillar Tractor Company?—A. Yes, sir.

Q. What else?—A. Innisfail Corporation, General Motors stock.

Q. At this date you are nominee for Mr. Smith for Innisfail Corporation stock?—A. Not Mr. Smith.

Mr. SHER. He didn't say that, your Honor. I object to counsel attempting to distort the answers of the witness.

Mr. PRATT. Well, if your Honor please—

270 Mr. SHER. I think that is a good example of it, if your Honor please.

The COURT. Do not let us waste very much time on that. Just read the answer.

(Answer read.)

Q. Are you, Mr. Doty?—A. What is that?

Q. (Question read.) A. No; Mr. Smith has no Innisfail Corporation stock.

Q. Then you want to change the previous answer?

Mr. SHER. Let us read the previous answer.

The COURT. We have had it read once and that is sufficient.

Mr. SHER. On that very question the witness has answered that Mr. Smith did not own Innisfail stock.

The COURT. Yes. You can tell us what Mr. Smith you referred to in your previous answer.

The WITNESS. Mr. John Thomas Smith had Caterpillar stock, Caterpillar Tractor stock which is in my name, which I hold as nominee.

The COURT. How about Innisfail?

The WITNESS. Innisfail Securities, I am the nominee on Chrysler Corporation some General Motors stock, and some Siscoe Gold Mines.

The COURT. You are speaking for Innisfail then when you speak about securities?

The WITNESS. Owned by Innisfail Corporation.

The COURT. You did not mean the stock itself of the Innisfail Corporation?

The WITNESS. No, no.

The COURT. Now, is that clear?

Mr. SHER. Yes.

Q. You say you are nominee on General Motors stock.—A. 271 General Motors stock owned by Innisfail Corporation, I believe there is a few shares that are in my name. There is quite a considerable amount, and I think it is small.

Q. Are any of these stock dividend payers?—A. Oh, yes.

Q. Are the dividend checks forwarded to you?—A. No; I filed dividend orders with the companies to have the dividends paid to the actual owners.

Q. Speaking of dividend orders, Mr. Doty, do you have with you here in court copies of the dividend orders about which you testified, or upon which there is testimony, that was sent to the dividend disbursing agent of Hudson Motors and Chrysler?—A. No; I have not.

Q. Back in 1932?—A. I have no dividend orders here.

Q. Do you know whether or not a dividend order was sent to anyone with respect to the 1,900 shares of Hudson Motors in January of 1932?—A. I am not positive that there were.

Q. Well, have you any recollection on the subject at all?—A. I am not sure that these were filed. I don't know. I don't know how long Hudson Motors paid dividends. I don't know whether we filed dividend orders with them or not; we did on the Chrysler, I am sure.

Q. Well, then, do you have a copy of the dividend order here?—A. No; I have not.

Q. Did you write the letter to Chrysler for the signature of Mr. Smith?—A. I am not sure whether I wrote it. I think I secured forms of dividend orders from the banks and had them properly executed and wrote the bank myself or Mr. Smith wrote them. I am not sure.

Q. Well, would you always send such dividend orders on blank forms?—A. As I rule I got the forms. They have dividend forms in different banks for different companies and they like to have them on those forms, if possible.

Q. Well, did you ever write a letter instead of using a
272 blank?—A. Well, I think we have written letters instead of
using blanks. I am not sure I ever did it myself or not.

Q. Well, have you seen any?—A. Yes, sir; I have seen some.

Q. Don't you have copies of those letters?—A. Yes.

290 Q. Now, Mr. Doty, you were asked about stocks which Mr.
Smith had sold to Innisfail Corporation, and upon which he
reported a tax loss?—A. Yes.

Q. Will you state whether or not the same loss would have been
reported by Mr. Smith if the stocks had been sold in the open market
instead of to Innisfail Corporation?—A. Oh, yes, yes.

Q. The same loss?—A. The same loss.

Q. Irrespective of who the buyer was?—A. Yes.

Q. Mr. Doty, you were asked concerning the purchase of 1,900
shares of Hudson Motor Car Company stock by Innisfail Corpora-
tion from Mr. Smith?—A. Yes.

Q. Did Innisfail Corporation at any time sell that stock?—A. I
believe they did; yes. It was sold in 1932.

Q. For how much?—A. \$12,000.

Q. And how much did Innisfail pay for that stock?—A.
\$106,400.

291 Q. And how much did Mr. Smith pay for that stock?—

A. I think it was—about 81 a share, \$81 a share, or \$160,000,
\$158,000.

Q. So that stock was sold by Innisfail in 1932 for how much, did
you say?—A. \$12,000.

Q. Did Mr. Smith take the loss in his income tax return on that
sale?—A. No.

Q. Who took it?—A. Innisfail.

Q. Would Mr. Smith have received any benefit by taking that in
his return?—A. Well, he would have considered it as part of his
losses in 1932.

Q. I say would he have received more benefit if he had taken it
in his return than if it were reported in the return of Innisfail
Corporation?—A. Yes.

The COURT. You mean—

The WITNESS. I believe he would.

The COURT. Because there would have been a broader margin of
loss?

Mr. SHER. This cost them \$106,000.

The COURT. To Innisfail Corporation?

Mr. SHER. Yes. That is one difference, your Honor, and a differ-
ence in rates also.

The COURT. I simply wanted to know if I understood you cor-
rectly.

Mr. SHER. Yes.

Q. Now, Mr. Doty, if a corporation receives income, does it pay
a tax on that income?—A. It depends upon the nature.

Q. Well, does it pay a tax on income received from capital gain?—

A. Yes.

Q. And does it now pay any tax on income received from dividends?—A. It pays a tax on 15 per cent of the dividends.

Q. The corporation pays a tax of 15 per cent?—A. It is a tax on—

292 The COURT. Are you speaking of 1928 or 1932?

Mr. SHER. I am speaking of the present now.

The COURT. What is the point of that?

Mr. SHER. Well, I will get back to the proper period. This witness has been qualified as a tax expert.

The COURT. Yes, I know, but what has the 1938 tax law to do with the problems before the jury in this case?

Mr. SHER. Very well.

Q. When did a corporation begin to pay any tax on dividends?—

A. I think it was—I think 1935 or 1936 was the first year.

Q. And has Innisfail Corporation received any dividends since that time?—A. Yes.

Q. Now, in 1926 did the corporation pay any tax on income from capital gains?—A. I believe they did.

Q. Well, you testified to cross examination, or on cross examination, rather, that Innisfail paid a tax?—A. Yes; they did.

Q. Now, when a corporation pays out any of its earnings to a stockholder as a dividend, does the stockholder pay another tax?

The COURT. Are you speaking now of—

Mr. SHER. In 1926.

A. Yes, they do, a surtax. They pay a surtax on dividends.

Q. That was true in 1927?—A. Yes.

Q. That was true in 1928?—A. Yes.

Q. That was true in 1929?—A. Yes.

Q. That was true in 1930?—A. Yes.

Q. That was true in 1931?—A. Yes.

Q. That was true in 1932?—A. Yes.

Q. So that, Mr. Doty, if income is received in the first
293 instance by a corporation and is then paid out as a dividend to a stockholder, there are more taxes and there is a higher tax on that income than if it had been received in the first instance by the individual, is that not true?

Mr. PRATT. I object to that question as calling for a conclusion and not connected with the issues in this case.

Mr. SHER. In 1926, with reference to the year 1926, you asked this witness to give conclusions.

Mr. PRATT. Over your objections.

Mr. SHER. Very well. That is the only reason I am asking the question now.

The COURT. Objection overruled.

Mr. PRATT. Exception.

A. Yes; the tax would be higher; it would be double taxation.

Mr. SHER. That is all, Mr. Doty.

Recross examination by Mr. PRATT:

Q. As a matter of fact, between the years 1926 and 1932 Innisfail Corporation declared one dividend, isn't that so, and that was \$70,000 in 1928?

Mr. SHER. Why don't you ask the witness what dividends were declared?

Mr. PRATT. Well, he testified yesterday and I figured—

Mr. SHER. Well, then, I object to it as repetitious.

The Court. I suppose the purpose is to connect something with something else, but if it is already in the record, why go into it?

311 LOUIS C. KRAUSS, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination by Mr. SHER:

Q. Mr. Krauss, what is your occupation?—A. I am employed by the General Motors Corporation as a transfer agent, and an assistant manager of its stock transfer and dividend department.

Q. For what corporation or corporations is your office transfer agent?—A. General Motors Corporation, E. I. duPont de Nemours & Company, National Baking Company, Investrad Corporation, Yellow Truck and Cab Manufacturing Company, and two or three others.

Q. What are your duties as transfer agent?—A. Primarily our duties as transfer agent is to transfer certificates of stock, make proper records of the transactions, maintain stock ledger accounts, make payments of the dividends.

Q. Do you have with you the transfer sheet of General Motors Corporation for December 30, 1932, showing the transfer of 2,000 shares of General Motors stock from John Thomas Smith to Mary A. Smith?—A. I believe—

Q. On or about that date?—A. I believe that is in those ledgers that you have on the table there.

312 Q. Here (indicating)?—A. Yes.

Q. Will you step down a moment, please?—A. May I have the date again?

Q. Or about December 30, 1932.—A. Yes.

Q. Will you read the entries?—A. I am reading from the official records of the transaction, General Motors Corporation, a debit entry appears on sheet number 1317, which is a part of the record of transactions made on September 30, 1932, a debit entry, John T. Smith, certificate numbers 5441 to 5460 inclusive, aggregating 2,000 shares of stock, and credit entry, Mary A. Smith, 1115 Fifth Avenue, New York, New York, certificate numbers 165687 to 165706 inclusive for 2,000 shares. That entry represents a surrender of certificates in the name of John T. Smith and the issuance of the certificates in the name of Mary A. Smith.

Q. Mr. Krauss, do you have with you the ledger account of John Thomas Smith showing that transaction?—A. Yes; I have.

Q. Will you please produce it?

Mr. SHER. While you are looking for it, the plaintiff offers in evidence a photostatic copy of transfer sheet number 1317 of General Motors Corporation for December 30, 1932.

The COURT. As to this entry?

Mr. SHER. Yes; your Honor.

(Marked "Plaintiffs' Exhibit 44.")

Q. May I ask you to read that, please, Mr. Krauss?—A. Yes. I have the account in front of me now.

Q. Will you read it, please.—A. Debit on a ledger card carried in our records under the name of John T. Smith, certificate 5441 to 5460 for 2,000 shares, debited out on December 30, 1932.

313 Mr. SHER. May I direct the jury's attention to the last line? The COURT. Yes.

Q. Do you have the ledger account of Mary A. Smith showing that transaction?—A. Yes, sir.

Q. Will you read it, please?—A. Reading from the ledger account of Mary A. Smith on December 30, 1932, there were entered certificate numbers 165687 to 165606, each for 100 shares, making an aggregate of 2,000 shares.

The COURT. Isn't that 706?

The WITNESS. 706.

The COURT. I think you said 606.

The WITNESS. I am sorry.

Q. Mr. Krauss, what use was made in your office of these ledger accounts?—A. Well, primarily they represent the persons who hold stock in the corporation and are used when making payment of dividends, stockholder meetings, and such matters.

The COURT. And constituting your list of stockholders, is that it?

The WITNESS. Correct, sir.

Q. Mr. Krauss, do you have with you canceled dividend checks representing dividends paid to Mary A. Smith since December 1932?—A. I have several checks here, the first one of which is dated March 13, 1933, which was the first payment made after December.

Q. Now, will you turn to your ledger account and tell us how many shares stood in the name of Mary A. Smith just before this acquisition of 2,000 shares, about which you have testified?—A. 35,585 shares.

Q. And then adding the 2,000?—A. Gave her a total balance on December 30, 1932, of 37,585 shares.

314 Q. Following this acquisition?—A. Yes.

Q. Now, will you look at that first dividend check to which you refer, and what is the date of that?—A. The payable date is March 13, 1933.

Q. And to whom is it made to?—A. Drawn to the order of Mary A. Smith, 1113 Fifth Avenue, New York, N. Y.

Q. And does the check show on how many shares the dividend was paid?—A. Yes, sir; it does.

Q. How many?—A. Check was drawn on 37,585 shares.

Q. Now, Mr. Krauss, do you have subsequent dividend checks paid to Mary A. Smith?—A. I have all subsequent dividends paid to her up to date.

Mr. SHER. May we read the dates into the record, your Honor, or for the record?

The COURT. The essential fact that you want to establish is that at all times since then Mrs. Smith has received as her own property the dividends on this total number of shares?

Mr. SHER. Yes; your Honor.

The COURT. That is the fact, is it?

Mr. SHER. Yes, sir.

The COURT. Do you question that statement?

Mr. PRATT. No; I do not, your Honor.

Mr. SHER. Very well.

Q. Mr. Krauss, do you have with you the transfer sheet of the National Baking Company for December 30, 1932?—A. Might I ask in whose name?

Q. Showing a transfer from John Thomas Smith to Innisfail Corporation?—A. I have the original ledger account of John T. Smith.

Q. Not the transfer sheet?—A. Oh, pardon me, transfer sheet?

Q. Yes.—A. Yes, sir.

315 Q. Will you read the entry relating to John T. Smith, reading from the transfer sheet?—A. Dated December 30, 1932, a debit entry John T. Smith, certificate number NCO-55, 19,934 shares, and credit entry John T. Smith, 1775 Broadway, New York, certificate number NCO-81, 1,610 shares, another credit entry, Innisfail Corporation, care of John T. Smith, 1775 Broadway, New York, N. Y., certificate number NCO-82, 18,324 shares.

Mr. SHER. The plaintiff offers in evidence the photostatic copy of the transfer sheet of National Baking Company for December 30, 1932, sheet number 577.

The COURT. What was the first credit total of shares represented by NCO-81?

The WITNESS. 1,610.

The COURT. 1,610.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit 45.")

Q. Do you have with you the ledger account of John Thomas Smith and Innisfail Corporation, showing the transactions, those two ledger accounts?—A. Yes, sir.

Q. Will you read the entries on that transaction, reading from the original ledger sheet?—A. Yes; reading from the original ledger sheet of John T. Smith, a debit entry December 30, 1932, NCO-55, 19,934 shares; reading from the original ledger sheet of Innisfail Corporation, a credit on December 30, 1932, NCO-82, 18,324 shares; going back to John T. Smith account, a credit entry December 30, 1932, certificate number NCO-81, for 1,610 shares.

Q. Mr. Krauss, do you have with you the transfer sheet of Investrad Corporation for December 30, 1932, showing the transfer of Investrad stock by John Thomas Smith?—A. Yes.

316 Q. Will you read that, please.—A. Reading from the transfer sheet of Investrad Corporation, dated December 30, 1932,

a debit entry John T. Smith, Certificate No. 5407, 2,109 shares, a credit entry John T. Smith, Certificate No. 5994, 556 shares, a further credit entry Innisfail Corporation care of John T. Smith, 1775 Broadway, New York, certificate number 5995, 1,553 shares.

Mr. SHER. Plaintiff offers in evidence the transfer sheet of Investrad Corporation for December 30, 1932, sheet No. 240.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit 46.")

Q. Mr. Krauss, can you tell us the amount of dividends annually paid by General Motors Corporation to Mary A. Smith, for the years beginning in 1922 or thereabouts?—A. Yes.

Mr. SHER. To show her separate estate and her means, your Honor.

The WITNESS. Yes, I can.

The COURT. Well, ten years?

Mr. SHER. I want to show she had ample means for years to carry out transactions such as are in question, sir, in this case. However, I will start with 1924 and 1925.

The COURT. I should think if you start with 1926, that will be sufficient.

Mr. SHER. Very well, your Honor.

The WITNESS. The records of the corporation show the dividend payments made to Mary A. Smith on her holdings of common stock of the corporation to be as follows—

The COURT. Give us the total for the year.

317 The WITNESS. For the year 1926, \$79,847; for the year 1927, \$99,196.50; for the year 1928, \$104,748; for the year 1929, \$107,478; for the year 1930, \$117,430.50; for the year 1931, \$106,755; for the year 1932, \$44,481.25. For the year—

Mr. SHER. That is sufficient.

Q. Mr. Krauss, how long have you been employed in the stock transfer department of General Motors Corporation?—A. Since May 1920.

Q. Can you state whether or not it is common practice for corporations to register stock in the name of individuals as nominees?—A. Yes, it is quite common.

Mr. SHER. That is all.

Cross examination by Mr. PRATT:

Q. Mr. Krauss, when you receive stock for transfer from one name into another name, do you get any communication from he who sends the stock in order to know of the new name into which to transfer the stock?—A. No, only on items such as might come in by mail, but even then the letter itself is not the governing factor. It is the assignment that appears on the back of the certificate.

Q. The name appears—A. On the assignment space on the reverse side of the certificate.

Q. You do not insist that the person whose name appears in the assignment space sign his or her name, do you?—A. No, that can be filled in by anyone.

Mr. PRATT. That is all.

Mr. SHER. That is all.

318 Robert N. Hinds, recalled.

Direct examination by Mr. SHER:

Q. Mr. Hinds, is the Chemical Bank and Trust Company the transfer agent for Electric Autolite Company?—A. Yes, it is.

Q. Do you have with you the transfer sheet of Electric Autolite Company?—A. Yes.

Q. Of January 3, 1933, showing a transfer from John Thomas Smith to Innisfail Corporation?—A. Yes, I have.

Q. Will you read it, please?—A. Under receipt number W-30288, John T. Smith surrendered certificates number NC-20565 through 9 inclusive, each for a hundred shares.

Q. How many certificates?—A. Five certificates numbered consecutively. The new certificates were issued in the name of Innisfail Corporation, 15 Exchange Place, Jersey City, New Jersey. The numbers were NC-42029 through 33, 500 shares.

Mr. SHER. Plaintiff offers in evidence transfer sheet of Electric Autolite Company, for January 3, 1933;

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit 47.")

Q. Do you have with you the ledger account of Electric Autolite Company for John Thomas Smith on the ledger account for Innisfail Corporation, showing that transaction?—A. I do.

Q. Will you read the entry, please?—A. I am reading from the ledger account of John Thomas—John T. Smith on January 3, 1933, certificates 20565 through 9, for a total of 500 shares, which were surrendered; and that left a balance of no shares in the account of John T. Smith.

Q. Yes.—A. Now, reading from the ledger sheet in the name of Innisfail Corporation, on January 3, 1933, certificates number 42029 through 33, for a total of 500 shares, were issued, and the balance remaining is 500 shares.

Q. Do you have cancelled dividend checks showing the payment of subsequent dividends to Innisfail Corporation on that stock?—A. I do.

Mr. SHER. May we have the same showing in this case, your Honor?

The COURT. I think so.

Mr. PRATT. I have no objection to this in evidence only that the record should be made to provide the checks are dated October 1, 1935, through '36 and '37, the last one being dated October 1st, 1937.

The COURT. Why not stipulate that the facts will show that? Were there any dividends paid between 1933?

Mr. SHER. That is what I wanted to reassure counsel of. I think he is aware of it already.

The COURT. Is it the fact that no dividends were paid from 1933, January of 1933, until some date late in 1935?

The WITNESS. I don't know, your Honor.

The COURT. All right. The witness states he can't tell, so we will have to clear that up.

Q. Do you have the ledger account of Innisfail Corporation down to date?—A. Yes.

Q. All right. Will you read what it shows after the—A. I think I already read that, sir.

Q. And there is no subsequent entry?

The COURT. No transfer out of Innisfail, is that it?

The WITNESS. No.

320 Mr. SHER. Then I should like to introduce in evidence, if your Honor please, cancelled dividend checks from Electric Autolight Company to the New York Trust Company for account of Innisfail Corporation, one check October 1st, 1935, January 2nd, 1936, April 1st, 1936, July 1st, 1936, August 15, 1936, October 15, 1936, December 21, 1936, April 1st, 1937, July 1st, 1937, October 1st, 1937.

Mr. PRATT. No objection.

Mr. SHER. Well, if your Honor please, I think the suggestion was that we do not encumber the record with the checks, and I will be glad to put them in. However, I think it is sufficient that the record show—

Mr. PRATT. My only purpose is to identify the date of the dividends.

The COURT. He stated the dates.

Mr. PRATT. I have no objection.

The COURT. Do you want the checks in or out?

Mr. PRATT. No, your Honor.

The COURT. Those checks were payable to the Innisfail Corporation?

Mr. SHER. To the New York Trust Company for the account of Innisfail Corporation, and some to the Commercial Trust Company for the account of Innisfail Corporation, but all for the account of Innisfail Corporation.

The COURT. All right.

Mr. SHER. That is all.

321 ALBERT W. SHELLEAN, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination by Mr. SHER:

Q. What is your occupation?—A. I am a correspondent.

Q. Is your office the transfer agent for the Firestone Tire & Rubber Company?—A. Yes.

Q. Do you have with you a transfer sheet of Firestone Tire & Rubber Company for January 3, 1933?—A. I believe that is in the possession of our concern.

Q. I have a certified copy here. Do you have the original?

A. The original is in the possession of the company in Akron, Ohio.

Q. Well, I understood you were to bring the original.

Mr. SHER. I wonder if there would be any objection here. I think we spoke about this before the trial. Here is a certified copy of the transfer sheet.

Mr. PRATT. No objection.

The COURT. I think you better identify the witness a little bit more completely. By whom are you employed, sir?

The WITNESS. City Bank-Farmers Trust Company.

The COURT. In what department?

The WITNESS. In the transfer department.

The COURT. And is that the transfer agent of the Firestone?

The WITNESS. It is.

Mr. SHER. Plaintiff offers in evidence certified copy of the transfer sheet of Firestone Tire & Rubber Company for January 3, 1933, page 1.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit 48.")

Mr. SHER. Certificates surrendered John T. Smith N. Y. C., 11/26 to 9, for 400 shares, N. Y. C. 1130 for 100 shares.

322 The COURT. How many was that first?

The WITNESS. 400, your Honor.

The COURT. What are those numbers?

Mr. SHER. N. Y. C. 1126 to 9, inclusive.

The COURT. The next was?

Mr. SHER. N. Y. C. 1130. They are consecutive and I don't know why they are set out separately on that sheet, your Honor.

The COURT. That is for one hundred?

Mr. SHER. That is for 100, certificate issued Innisfail Corporation, 15 Exchange Place, Jersey City, N. J. Certificate number 5231 to 3, for 500 shares.

The COURT. One hundred shares each?

Mr. SHER. Yese, your Honor, presumably.

The COURT. And the date of that is January 3, 1933?

Mr. SHER. Yes, sir.

Q. Now, do you have with you the ledger account of John T. Smith?—A: That is also something I should have. As you know, we do not keep transfer books in New York. They are kept by the company. We merely make up the sheets and effect the transfer.

Q. You furnish the photostatic copy?—A. Furnish the sheet to the Firestone people, who make up the ledger accounts.

Mr. SHER. Do you have any objection to this?

Mr. PRATT. No objection.

323 Mr. SHER. Plaintiff offers in evidence ledger account of Innisfail Corporation, in connection with Firestone Tire & Rubber Company stock, and the ledger account of John T. Smith, changed to Chemical Bank and Trust Company care of John T. Smith, New York, N. Y., also with reference to Firestone Tire & Rubber Company stock.

(Marked "Plaintiffs' Exhibits Nos. 49 and 50.")

Mr. SHER. Now, with the consent of counsel I should also like to offer photostatic copy of dividend checks beginning January 30, 1933, and running until October 20, 1937.

Mr. PRATT. No objection.

Mr. SHER. That is all. May the record show that checks beginning January 20, 1933, and continuing through October 20, 1937, paid to Innisfail Corporation or Commercial Trust Company of New Jersey, for the account of Innisfail Corporation, as dividends on Firestone Tire & Rubber Company stock.

The COURT. Are you offering the checks, or not.

Mr. SHER. No; just having the record show that, your Honor.

The COURT. Very well.

ROBERT W. DAVISON, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination by Mr. SHER:

Q. What is your occupation, Mr. Davison?—A. Transfer agent, National Sugar Refining Company of New Jersey.

Q. Do you have with you the transfer sheet of the National Sugar Refining Company for December 31, 1932, showing a transfer from John Thomas Smith to Innisfail Corporation?—A. I do.

Q. Will you read the entry, please?—A. Our date here is the 31st of December 1932.

324 Q. Yes.—A. Certificate No. T-1969, 800 shares, name John T. Smith, transferred to Innisfail Corporation, Certificate numbers 5337, 8940, 41, 42, 43, 44, 100 shares each.

Q. A total of how many?—A. A total of 800 shares.

Mr. SHER. Plaintiff offers in evidence photostatic copy of transfer sheet of National Sugar Refining Company, for December 31, 1932.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit No. 51.")

Q. Do you have with you the ledger account of National Sugar Refining Company, showing that transaction?—A. Yes.

Q. Will you read the items, please?—A. You want for John T. Smith or Innisfail?

Q. Both.—A. John T. Smith on January 2, 1929, is charged with 800 shares, and on December 31, 1932, credited with the said certificate T-1969, 800 shares going to the Innisfail Corporation.

Q. Innisfail Corporation was credited with those?—A. Yes.

Q. Now, do you have with you any capital dividend checks paid to Innisfail Corporation?—A. We have the photostatic copies of them. Counselor, I have the originals, too, during the year 1937, whether that is material or not.

Mr. SHER. That is all right, sir.

Mr. PRATT. No objection.

Mr. SHER. Well, let the record show dividend checks from National Sugar Refining Company to New York Trust Company, etc.

of Innisfail Corporation, April 1st, 1933, July 1st, 1933, October 1st, 1933, January 2nd, 1934, April 2nd, 1934, July 2nd, 1934, October 1st, 1934, January 2, 1935, April 1st, 1935, July 1st, 1935, October 1st, 1935, January 2, 1936, April 1st, 1936, July 1st, 1936, October 1st, 1936, January 2, 1937, April 1st, 1937, July 1st, 1937, October 1st, 1937. And you have some subsequent?

The WITNESS. No; I happen to have the original. That is all.

Mr. SHER. Well, the record will show—

The WITNESS. That was the National City Bank and you read the New York Trust Company.

Mr. SHER. No; New York Trust Company on the original dates.

Q. You mean you have the checks?—A. Yes.

Q. Well, those are the same dates as the checks I read, are they?—

A. Yes; they are.

The COURT. Look at your 1937 checks and see if you have the photostat there.

Mr. SHER. The witness is talking about the bank from which the dividends were paid. I was reading New York Trust Company care of Innisfail Corporation.

The WITNESS. Yes; I understand.

Mr. SHER. To which the dividends were paid.

The WITNESS. Yes.

Mr. SHER. That is all.

• Cross examination by Mr. PRATT.

Q. Mr. Davison, were you reading from the ledger account of John Thomas Smith, with respect to January 2, 1939?—A. Yes; that is the date our stock, the old certificates were turned in to get stock certificates of no par value, four for one on January 2, 1929.

Q. Now, that is, there was an exchange of old for new?—A. That is it.

Q. And that records 800 new?—A. That records 800 new.

Q. What do your records show as far as the date of the original acquisition?—A. November 1st, 1926, from various certificate 2405, 100 shares certificate 2406, 100 shares, and then here the—

Q. Then the swap of four for one?—A. That is it.

Mr. PRATT. That is all.

The WITNESS. I did not read because I did not think you would need it.

Mr. SHER. With consent of counsel plaintiff offers in evidence two sheets from the stockbook of Gaynor Electric Company, showing the transfer of 331 shares of Gaynor Electric stock from John T. Smith to Innisfail Corporation, on December 29, 1932.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit 52.")

The COURT. How many shares was that?

Mr. SHER. 331, your Honor.

IRVING DAN STERN, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination by Mr. SHER.

Q. What is your occupation?—A. I am a public accountant, certified public accountant, employed by Barrow, Wade & Guthrie, accountants and auditors.

Q. Did your firm make an examination of the books of John Thomas Smith for the period November 1st, 1931, to May 31, 1934?—

A. Yes, sir; it did.

Q. I will hand you a document and state whether or not that is a report of your examination (handing)?

327 The COURT. What is that second date?

The WITNESS. May 31, 1934.

A. Yes, it is.

Mr. SHER. Plaintiff offers in evidence report of Barrow, Wade & Guthrie Company, accountants and auditors, John Thomas Smith report of examination from November 1, 1931, to May 31, 1934.

Mr. PRATT. I object to it, if your Honor please. It has absolutely no bearing on the issues in this case. It represents a report that undoubtedly contains conclusions, and it should not be binding upon the defendant, and it defeats the right of cross-examination.

The COURT. What is the purpose of it?

Mr. SHER. The purpose, your Honor, is many fold. In the first place, there is a fraud charge in this case. The purpose is to show that the plaintiff kept his books in the regular course of business and submitted his books periodically to a firm of certified public accountants to be audited by them. I think that alone is sufficient.

The COURT. He has already told you that they did.

Mr. SHER. Now, we certainly have a right to corroborate his testimony by the testimony of the accountant himself who made the examination.

The COURT. Well, ask him that and he will tell you.

Mr. SHER. Well, I have, and his answer was—

The COURT. No; you said he was employed by Barrow, Wade, Guthrie & Company, and that is a very large organization as perhaps you know.

Q. Well, did you make the examination yourself?—A. Yes; a personal examination.

328 The COURT. Very good. Now we have that far, that he made the examination.

Q. Did you prepare this report?—A. Yes; I did.

Mr. SHER. I think we have a right to show the result of his examination.

The COURT. I don't think so. He is here to tell you what the result of his examination was.

Mr. SHER. Very well.

Q. Can you state from memory what the result of your examination was?—A. No; I can not.

The COURT. Just a moment. We are not involved or much interested in the five-year period terminating in 1934.

Mr. SHER. Well, it covers a period, if your Honor please—

The COURT. I think you may ask this witness anything about the income and disbursements of the plaintiff during the year 1932. That is what we are primarily concerned with.

Mr. SHER. Well, may we not show that the accountant examined and studied the account between Mr. Smith and the Innisfail Corporation, and verified the accounts and was satisfied with such accounts as an accountant?

The COURT. You may ask him anything that you think bears on Mr. Smith's income and disbursements for the year 1932.

Q. Did you find any indebtedness by Mr. Smith to Innisfail Corporation or by Innisfail Corporation to Mr. Smith?

329 Mr. PRATT. I object to the form of that question, if your Honor please.

The COURT. Sustained.

Q. What did you find as to—

The COURT. No.

Q. (Continuing.) Transactions—

The COURT. Please. What did you look at first?

Q. What did you examine? What books did you examine?—A.

I examined the—which company are you referring to?

Q. John Thomas Smith.—A. John Thomas Smith, I examined all the books, all of his books of account, and, as far as I can recall, it represented a general ledger, journal, a cash book, and some supporting records.

By the COURT:

Q. What do you mean by "some supporting records"?—A. I believe there is probably a separate record of the investments, as I recall it.

Q. Now, of the books that you examined, which were the books of original entry?—A. The cash book, the journal—the cash book and the journal.

Q. You examined those?—A. I did.

Q. Now, according to those books, did you find any indebtedness?—

A. Any indebtedness?

Q. Or what indebtedness, if any, did you find?—A. Well—

Mr. SHER. Between Mr. Smith and Innisfail Corporation, the Court means.

330 The COURT. Well, I understood we were talking about Mr. Smith, weren't we?

Mr. SHER. Well, the witness said, what indebtedness?

Q. Well, I am asking you?—A. Mr. Smith made—well, may I have a copy of that report before me to refresh my memory?

Q. You can't recall otherwise? Have you your work sheets, for instance?—A. I have them over in my book.

Q. Well, you get your work sheets. That is the best thing to refresh your memory.—A. I find that on December—on January 1, 1932, John Thomas Smith was indebted to the Innisfail Corporation to the extent of \$41,777.18.

Q. \$41,000.—A. \$777.18.

Q. That is according to the books of original entry that you examined?—A. That is according to the—of the balance in the ledger account of John Thomas Smith, and which is a result of the transactions in the books of original entry, your Honor.

Q. Well, the ledger is a book of original entry, isn't it?—A. No, sir.

Q. I did ask you specifically about the books of original entry, but I suppose it is not very important. You discovered, from the books and records that you examined that they contained evidence of an indebtedness from Mr. Smith individually to the Innisfail Corporation on January 1, 1932, of \$41,777.18?—A. That is right.

Q. Now, did you undertake by an independent examination to verify the evidence of that indebtedness?—A. Yes, sir.

Q. What did you do?—A. We examined every entry that was charged or credited to that account. That is, I personally examined every entry that was charged and credited to that account from November 1, 1931. That was the commencement of my investigation right to May 31, 1934.

331 Q. Yes.—A. Which was of the time I examined.

Q. We are dealing with January 1, 1932. Now, you went back, as I understand it, to November 11th, 1931?—A. November 1.

Q. November 1, 1931.—A. Yes.

Q. And that was a period of two months prior to January 4, 1932, wasn't it?—A. Yes, that is right.

Q. You examined all transactions between those two dates to verify that loss or that indebtedness, did you?—A. That is right.

Q. Did you go back of November 1, 1931?—A. Well, I personally did not, but—

Q. Never mind. We are talking about what you did. You accepted then the showing of the books as of November 1, 1931?—A. The showing of the books made by our firm.

Q. That was your starting point.—A. Yes, sir.

The COURT. Very good.

By Mr. SHER:

Q. Did you make an examination of the income of Mr. Smith from the sale of securities during that period?—A. I did.

The COURT. During what period, please?

Mr. SHER. The period of the examination, your Honor, November 1st, 1931, to May 31, 1934.

The COURT. Now I have told you once, and I don't want to have to do it again. Presently we are concerned with the year 1932, and this witness may go back to November 1931.

Mr. SHER. Well, your Honor, I just want to say—

The COURT. Please except to the ruling. We are going to discuss income for 1932.

Mr. SHER. Very well.

332 Q. Did you make an examination of Mr. Smith's income from sale of securities during the year 1932?—A. I did.

Q. What did you find?—A. I found that he—that the entries were correctly recorded as they were on the books.

Q. Well, can you state what securities were sold by Mr. Smith in 1932, and with what result?—A. Well, I mean, if you give me time to dig through these papers I might find that information. I can't tell you offhand.

Q. Go right ahead.

Mr. PRATT. I object to the form of that question. I do not think the word "sold" has any meaning in the true legal aspect.

The COURT. Well, this witness is going to tell us what he discovered in the records and if he discovered the records show sales, he may say so.

The WITNESS. My working papers indicate that there was a sale on November 2, 1932, of Chrysler Corporation common stock.

Q. How many shares?—A. Of 100 shares.

Q. With what result?—A. The proceeds—

The COURT. Do the records indicate to whom the sale was made?

The WITNESS. No, sir; they don't, your Honor.

The COURT. All right.

The WITNESS. The proceeds of which was one thousand—wait a minute, I am not sure about that. All right, I have 100 shares sold on November 2, 1932, of Chrysler Corporation stock, the proceeds were \$13,795.50; on November 4, 1932, 2,900 shares were sold for \$40,005.50. November—

333 Q. Do your records show whether there was a gain or loss on that?—A. Yes, I am just coming to it. I have them bracketed and there is a few transactions, and I showed gain or loss on these.

The COURT. November 4th is the last.

The WITNESS. November 4th was the last. The next item is November 5th, 1,000 shares sold, \$13,795; November 5th, 1,000 again sold for \$13,920.

The COURT. \$13,920?

The WITNESS. Yes, sir. Now, on those items that I have just given there was a recorded loss of \$143,252.63.

The COURT. \$143,000—

The WITNESS. \$143,252.63.

Mr. PRATT. What items are those, please?

The WITNESS. 100 shares, 2,900, 1,000—

Mr. PRATT. All Chrysler?

The WITNESS. 1,000.

The COURT. 5,000 in all?

The WITNESS. That is right, and they are all Chrysler.

The COURT. Now, what were the proceeds? State the proceeds that you have.

The WITNESS. I can give it to you backwards. Well, wait a minute. \$69,100, I believe.

The COURT. Now, what have you indicated as the cost, because you have set up a loss there? What have you indicated the cost to be?

The WITNESS. I will find that elsewhere. I have a record in the papers here that states the loss on sale of securities where any other holdings were not sold. That is the title I have to this page, and I list 5,000, these particular 5,000 shares as sold, and I show the cost of the various lots that went into that 5,000. I will call that off if you wish.

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By the COURT:

Q. Well, I am not quite so interested—A. The total cost.

Q. Give me the total cost.—A. The total cost is \$212,352.63.

Q. \$212,000—A. \$212,352.63.

Q. Now where did you get that from?—A. I obtained that from our previous working papers in which we showed the acquisition of these securities.

Q. All right. And the dates, of course?—A. Yes.

Q. Now, that takes care of 5,000 Chrysler sold during the month of November 1932?—A. Yes.

Q. Were there any other sales in that calendar year?—A. Yes, sir. I am just taking them as I come to them.

Q. All right. What is the next date?—A. Now, we have some more Chrysler stock sold on December 12, 1932, 2,000 shares, proceeds \$33,742, loss \$31,010.

Q. Now did you get the cost of that last lot from the same source that you did the others?—Yes, all my costs came from the same source.

Q. What is the next sale?—A. December 27, 1932, 2,000 shares, proceeds thirty thousand—

Q. Of Chrysler?—A. Yes. This is Chrysler.

Q. And what is the proceeds?—A. \$30,742, loss \$31,569.22.

Q. And you got the cost figures from the same source, previous work sheets?—A. Yes, sir.

Q. The next sale.—A. December 28, 1932, 2,000 shares Chrysler Common, proceeds \$31,242; loss \$23,579.13. December 28, 1932, 1,400 shares of common stock Chrysler, proceeds \$22,219.42; loss \$15,090.60. December 29, 1932, sold 1,100 shares of Chrysler common stock for \$17,458.10; loss \$11,876.90. On December 29, 1932, Electric Autolite Company, common stock, 500 shares were sold for \$9,000.

Q. Flat?—A. 500 shares was sold for \$9,000.

Q. I say \$9,000 flat?—A. Flat, yes, sir. Loss of \$10,715. July

29, 1932—

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Q. July?—A. July 29, 1932, Fagardo Sugar Company, Porto Rico Common, 100 shares, were sold for \$3,526; loss of \$5,531

The same company sale of August 23, 1932, 12 shares for \$582.12; 1

loss of \$404.63. On December 29, 1932, Firestone Tire & Rubber Company Common, sold 500 shares for \$6,500; a loss of \$12,029 even. December 29, 1932, Gaynor Electric Co., Inc., Common, sold 332 shares for \$3,320; a loss of \$46,000—

Q. How much?—A. \$46,766.56. General Electric Company Special stock.

Q. Same date.—A. Sold on April 11, 1932, 12 shares for \$125.38. There was a gain there of \$125.38. That stock was on the books at no value. The next item is General Motors Corporation Common, December 29, 1932, sold 2,000 shares, proceeds \$24,500; loss \$79,866.

Q. \$79,866?—A. Yes, sir. Investrad Corporation Common—

Q. Same date?—A. December 29, 1932, sold 1,553 shares for \$6,879.80; loss \$26,743.09.

Q. Now just stop there for a moment. That is 1,553 shares?—A. Yes, sir.

Q. Is there any indication in your papers as to how that price was established, that selling price?—A. How the selling price was established?

Q. Yes, sir.—A. No, sir. I would not have any indication in my papers.

Q. That is all right. I just thought that you might.—A. No. National Baking Company Common—

Q. Same date?—A. December 29, 1932, sold 18,324 shares for \$18,324; loss \$70,670.58. National Sugar Refining Company of New Jersey Common, December 29, 1932, sold 800 shares for \$16,900; loss \$9,047 even. That seems to be all the sales I have for the year 1932.

Q. Now, in each case is it the fact that you verified the loss according to the books by comparing the selling price with the cost figures obtained from your prior work sheets—that is, the prior work sheets of your firm?—A. That is as I have indicated in my papers. It so states.

Q. Now, I want to interrupt you a moment before I forget it. In reference to this Gaynor Electric, was there anything about dividend checks there in the Gaynor Electric?

Mr. SHER. No, your Honor, there were no dividends on Gaynor Electric. That is why we did not introduce any checks.

The WITNESS. I can verify that from my papers.

The COURT. All right. What were those dividends that began in 1935?

Mr. SHER. I think that was Electric Autolite.

The COURT. Electric Autolite?

Mr. SHER. Yes.

The COURT. And have we the figures in that connection?

Mr. SHER. You mean the amount of these dividends?

The COURT. Yes; we have a stipulation that there were cancelled dividend checks and that they were paid to Innisfail.

Mr. SHER. That is right.

The COURT. I think we better amplify that stipulation by giving the figures. We do not want to interrupt this testimony to do it, but bear in mind that that should be done before you close your case, will you, please?

Mr. SHER. Yes, your Honor. I have them right here.

The COURT. Well, would it interfere with you to do it now?

Mr. SHER. I would be perfectly willing. You want each check and the amount?

337 The COURT. Well, I think, if you can give the total, whatever is easiest for you.

Mr. SHER. I can give them by check. I think it is just as well to have it all in. October 1, 1935, \$150; January 2, 1936, \$150; April 1st, 1936, \$150; July 1st, 1936, \$150; August 15, 1936, \$250; October 15, 1936, \$300; December 21, 1936, \$300; April 1st, 1937, \$300; July 1st, 1937, \$400; October 1st, 1937, \$400.

Were you still questioning the witness, your Honor?

The COURT. No, sir; I think he has told us now the total sales that he encountered from his examination of the books for the year 1932, giving the items.

By Mr. SHER:

Q. Did you make any examination of the investments of Innisfail Corporation as of December 31, 1932?—A. I did make an examination of the books of Innisfail Corporation for the period which included the year 1932.

Q. Well, do you have a record of the investments of Innisfail Corporation as of December 31, 1932, and if not, for what time do you have such a record?—A. No, sir; I do not. I have a record of the investments of Innisfail Corporation at October 31, 1931, and at May 31, 1934.

Mr. SHER. May we have the investments of May 31, 1934?

The COURT. No.

Mr. SHER. Your Honor, that will show that Innisfail Corporation having purchased these securities from Mr. Smith, as we allege, still holds them in his investment account in 1934.

338 The COURT. The only difficulty with that is that theoretically the books which might be entirely accurate, at the same time there might have been a series of transactions between the end of 1932 and 1934 that would not show it in the same manner.

Mr. SHER. Well, if we find the exact part, your Honor—

The COURT. Let us find out what Innisfail had on December 31, 1932, which comprehends the date when it is supposed to have been the purchaser of certain of Mr. Smith's securities.

Mr. SHER. Well, I asked the witness that question and he said he can't give it.

The COURT. Very good. If he can't give it, he can't.

Mr. SHER. Well, that is why I asked him—

The COURT. It does not follow from that that he can give something two years later.

Mr. SHER. But if we find the exact same securities and the exact same number of shares in May 1934, I submit that that is evidence of the purchase by Innisfail Corporation of the securities.

The COURT. After all is said and done, haven't these corporate agents shown you what their records show with respect to the issuance of securities to Innisfail Corporation?

Mr. SHER. Yes, your Honor; I am convinced of that, but I want to put in every bit of proof to establish that.

The COURT. I think you have covered that. That is sufficient. This witness says he was not able to ascertain from Innisfail records its purchases on that date. We are not without proof on the subject.

Mr. SHER. Well, may I have an exception?

The COURT. Surely.

Mr. SHER. That is all.

Mr. PRATT. May I have that paper you have there, Mr. Sher?

339 Mr. SHER. I will offer it in evidence if you want it in. I will be very glad to put it in evidence. Will you agree that this may be offered in evidence?

Mr. PRATT. No; I just wanted that as a convenience.

Mr. SHER. Why shouldn't the Court and jury have the convenience of it?

Mr. PRATT. It can if it ought to go in, but we are conducting this trial in accordance with the rules of evidence, not my personal wishes. If it should go in, the whole thing should go in.

Cross examination by Mr. PRATT:

Q. Mr. Stern, I hand you, Plaintiffs' Exhibit 1, the tax return of John Thomas Smith for the year 1932, and I direct your attention to Schedule D-5 [handing]?—A. Yes.

Q. You have it?—A. Yes; I have.

Q. Now you will note—

The COURT. Just a moment. I would like to see it equally. What is D-5, a schedule list of securities?

Mr. PRATT. Yes, your Honor.

Q. Now, you see a notation there that on December 29, 1932, there were 500 shares of Electric Autolite sold?—A. December 29, 1932?

Q. Yes; there is such an entry?—A. Yes; I see that.

Q. And that is indicated at what price, please?—A. \$8,960.

Q. Yes. Now, what does your record show?—A. I am just trying to find out. \$10,615.

The COURT. He is asking you what the selling price is, aren't you?

Mr. PRATT. Yes.

340 Q. The selling price?—A. Oh, \$9,000.

Q. That is different than that which is shown on the tax return, isn't it?—A. Is this supposed to be the selling price on the tax return?

Q. Whatever it says there.

Mr. SHER. I object to selling price, your Honor, whether it is gross or not, your Honor. It is perfectly apparent what counsel is trying to do, confuse the witness.

Mr. PRATT.—It is perfectly apparent that all counsel is trying to do is to compare the report with Mr. Stern's testimony. He testified that Electric Autolite was sold at \$9,000, and this schedule shows that it was sold for \$8,960, and no doubt about it.

Q. Now, look at the return, Mr. Stern, under the item Fagardo Sugar.—A. Yes, sir.

Q. And you will see that the selling price there is, how much?—A. On the return?

Q. Yes.—A. I don't know what you mean by the selling price, but we have the figure here Sold 100 shares, \$3,526, and 12 shares for \$582.12, and that is exactly what my paper shows in this instance.

Q. Yes. Now, going to Firestone Tire & Rubber Company, do you see alongside the entry December 29, 1932—A. Yes.

Q. Sold 500 shares, the price \$6,496?—A. Yes, sir. My records show \$6,500.

Q. Gaynor Electric, do you see December 29, 1932?—A. Yes, sir.

Q. Sold 332 shares, and it is indicated on the return as \$3,293.34?—A. This is \$3,320. My records show \$3,320.

Q. Now, when you made your record of the sale on your papers, where would you take that record from?—A. From—the detail
341 of the record would be taken from some—from a voucher they had, supporting vouchers explaining each sale and purchase, you see.

Q. What do you mean by "voucher"?—A. A memorandum explaining the transaction.

Q. A memorandum made up by Mr. Doty?—A. I presume, yes, that he—I don't know whether it was made up by Mr. Doty, but some memorandum in file. It might have been made up by Mr. Doty or somebody else. You understand, counselor, that this is four years ago, and I can't be absolutely certain exactly.

Q. Oh, sure.—A. In this case just what the voucher looked like.

Q. I am not contradicting you on anything.—A. You have got to realize I am a little vague just what the voucher looked like or anything like that.

Q. Yes. I am not trying to contradict you. My point is this whether you would check to see whether the actual dollars and cents were received in connection with these transactions or whether you took your information from some records that you found there.—A. Well, all these transactions are sales and were tied in with the cash records.

Q. There would be an entry in the cash book?—A. If it came through cash, yes, but it might not have come through cash. There may have been a question of sale where it came through an entry charging somebody else's account for it and crediting the sale.

Q. Then there would be no cash entry, for instance?—A. That is right.

Q. Well, can you, from your sheets tell us whether or not there was a cash entry in the book in connection with the sale of 800 shares of

Electric Autolite?—A. No, sir; my papers do not indicate whether it was a cash entry or not.

Q. Well, then, you can't tell whether this entry is just a book entry or whether it is actual cash which passed in the transaction?—

342 A. I can't say whether actual cash passed with the transaction, or whether it came through a journal entry.

Q. It might be indicated on the books as a charge to one account and a credit to another?—A. Yes.

Q. Now you spoke about having cost figures prepared from these work sheets?—A. Yes, sir.

Q. Do you have your previous work sheets there?—A. No, sir; I have not got them here going all the way back.

Q. It goes all the way back?—A. I say I have not got them going all the way back to the beginning.

Q. Well, did you make the previous audits?—A. I personally did not.

Q. So then you don't know of your own knowledge what the accuracy of the cost figures as shown on the previous work sheets is, do you?—A. I have—

Q. I say—

Mr. SHER. Let him answer.

Q. Do you have confidence in them?—A. I have to accept the working papers of the man that did the work before me.

Q. Yes.—A. Knowing that his work would be accurate, would be accurate, I happen to know the individual and knowing our organization, I know there would not be any figures there that are not correct.

Q. You don't know, however, how he arrived at the cost figures, do you?—A. No; I can't say.

Q. You don't know, for instance, whether he saw brokers' slips showing the purchases?—A. No; I can only tell you what I saw and perhaps assume that he saw the same thing.

Q. I am asking you—A. I can't tell anything more than that.

Q. I am asking you about the cost figures—A. Yes.

343 Q. From which you concluded, as you did a moment ago, that certain losses had taken place.—A. I can't tell you anything more than that.

Q. Now your answer would be the same with respect to the Firestone Tire & Rubber sale of 500 shares of stock, would it not?—A. Yes, sir, the same.

Q. And with the Gaynor Electric Company, of 332 shares?—A. Yes, sir.

Q. You are not in a position to know from anything you have there how much the Gaynor Electric stock cost John Thomas Smith, are you?—A. Oh, yes; let me tell you, I can tell you what the cost was according to our previous working papers.

Q. Yes.—A. Yes, I can tell you that.

Q. You don't know how your predecessor arrived at those figures, do you?—A. No, I can't say that.

Q. Now, your answer is the same with respect to the sale of 1,553 shares of Investrad Corporation?—A. Yes, sir.

Q. Now, you see the next one, National Baking, December 29, 1932, sold 18,324 shares?—A. Yes.

Q. At \$16,858.08?—A. Is that in this schedule here?

Q. Yes, on the tax schedule, excuse me.—A. Yes, sir.

Q. And how much do your working papers show the proceeds of that sale to be?—A. National Baking, you have \$16,858.08.

Mr. SHER. What was that amount?

Mr. PRATT. \$16,858.08.

The WITNESS. Yes. I have \$18,324, but I just discovered something which I think will be helpful, and it is only fair that I state that my working papers going back where I saw the details where I got my cost figures and the selling price, I see there in every instance a pencil accounting for all these other differences. I just noticed it now. That I see the proceeds of this we deduct from the proceeds the cost of stamps in each case, and in this case, I think

344 \$18,324, which is the proceeds shown on this schedule, but in arriving at the net gain or loss, which I have given you, I have taken into consideration the cost of the stamps.

Q. Yes.—A. And that brought it down to \$16,858.08, which is the amount they show here.

Q. That accounts for the difference?—A. Yes, sir, as difference in that you do not make the deductions.

Q. Just a moment. That accounts why yours is different, because you do not make the deduction for stamps, is that it?—A. Well, this particular schedule, the deduction for stamps is not set out here but is taken into consideration in showing the gain or loss to be in the gain or loss column.

Q. Now, National Sugar Refining Company, you show a sale, or your figures are what as to the proceeds on that sale?—A. I have \$16,900, and this says \$16,858.08 on the tax books.

Q. \$828, isn't it?—A. \$16,858.08, what this schedule shows.

Q. Excuse me. I thought I was inquiring about National Sugar Refining.—A. Oh, I am looking at National Baking. I am sorry. \$16,828, and I have \$16,900, and the difference represents the transfer stamps.

Q. That would be \$72 for transfer stamps?—A. That is right. In this particular record my record shows transfer stamps, \$72.

Q. For 800 shares?—A. Yes, sir.

Q. Now, in connection with the National Sugar Refining—A. Yes, sir.

Q. Do you have on your figures a purchase price of the stock?—A. The purchase price of the original 800 shares?

Q. Yes, as indicated on your sheets.—A. Yes, \$25,875.

345 Q. So that in each case in the stocks about which we have been talking, the loss that you indicate in connection with the sale or at least that you indicated in your direct

testimony was less than that shown on the return?—A. No, sir, it is the same when you take into consideration the transfer stamps. I showed you the gross—I gave you the gross sale before.

Q. For instance, in the National Sugar Refining, you have a cost there of \$25,875?—A. That is right.

Q. Then you on your direct examination testified that the sale price was \$16,900?—A. That is right, without—

Q. And that—

Mr. SHER. Let him finish.

A. But that does not take into consideration the \$72 of stamps.

Q. Yes.—A. That we had to pay.

Q. What do you make the net loss including the stamps?—A. The amount that I gave on direct testimony, \$9,047.

Q. All right. Now, you testified as to the sale of 13,500 shares of Chrysler, did you not?—A. Yes, sir.

Q. You testified—A. Wait a minute, now. How much was that, did you say?

Q. You have a total of 13,500.—A. That is right, 13,500 for that year.

Q. And what is your total proceeds of sales as reflected by your sheet?—A. Well, I gave you a figure before—

Q. Do we get an aggregate?—A. No, we did not get an aggregate.

Q. Can you foot it there?—A. Yes. I will get it for you in just a moment. I think the aggregate sales for 1932, Chrysler, of the proceeds I gave you, were \$204,503.50.

Q. And do you have a cost there?—A. The cost of that whole group, I will have to add it all up. I have got it split up here. Assuming I have not made any error in addition, the total cost is \$460,881.98.

340 Q. Now, did you verify the bank account?—Yes, sir.

Q. By communication with the bank?—A. Yes.

Q. Did you go down to the safe deposit box to count the securities?—A. The securities were all brought to me in a box and I counted them. That is as of May—I counted them in July as of May 31st and counted them or accounted for any differences, you see.

Q. You made your examination in July?—A. You see, my examination was for the period to May 31, 1934, and at the time Mr. Smith was abroad, I believe, and he came back in July, and then we were able to get out the securities and I counted them and accounted for any differences that there might have been between May 31st and July, to assure the fact that all the securities that the records indicated were on hand.

Q. You counted Mr. Smith's securities?—A. And Innisfail's.

Q. Down at the—

The COURT. No, he said they were brought to the office.

A. No, they were brought to the office.

Q. Brought to the office?—A. They were brought to the office in the boxes, you know.

Q. Yes.—A. I think there were three boxes, if I am not mistaken, two or three, and they were brought to the office and then opened in my presence and counted by me.

Q. Well, did any of your associates bring them from the bank up to your office?—A. No, sir.

Q. Who brought them up?—A. I believe it was Mr. Smith and Mr. Hogan.

Q. Now, in that sheet that you have showing costs, which you relied upon, and which was the sheet made up by your predecessors, are certificate numbers in each case indicated on the stock?—A. No, they are not.

347 Q. Well, for instance, going back to Electric Autolite, when you stated that the cost of 500 shares of Electric Autolite, at \$19,575 was indicated on your predecessor's work sheet, you do not know which certificate—A. I was able to—from the voucher on file at the office giving the details of the sale, the description was such that I was able to identify the items in my working papers. That is, I just accounted to you just how it was. I don't think my previous working papers had the certificate numbers in them.

Q. No.—A. But the description was such that I could get the exact date and I was able to identify them in that way.

Q. You checked up the number of shares—A. Yes.

Q. And the date on which the purchase was made?—A. Yes.

Q. But you would not have the certificate numbers showing that the particular stock was bought on such and such a day?—A. No, I do not believe we had the certificate numbers.

Q. When you counted the certificates of Innisfail Corporation, did you check the certificate numbers?—A. Yes, we actually checked the certificate numbers and have a record of our account with the certificates at the time we made the count.

Q. Is it also true in connection with the Firestone Rubber Company—A. Yes.

Q. That your cost basis is indicated by your predecessor's sheet and it does not indicate any certificate numbers?—A. Yes, sir; that holds true in all cases.

Q. Along with the Electric Autolite and the rest of them?—A. Yes, sir. That is right.

Q. Did you make any recommendations on the systems to be used as to bookkeeping and what entries should be set up?—A. No, sir.

348 Q. Had your predecessors made any specific recommendations?—A. I can't speak, sir, for my predecessor. I don't know.

Q. Well, would your predecessor's work sheets have any such recommendations?—A. There is no such recommendation in his work sheets from what I have seen of them.

Q. The records you found there were the standard records that you see usually?—A. Yes, sir.

Q. There was a cash book?—A. Yes.

Q. And the journal?—A. Yes.

Q. General ledger?—A. Yes.

Q. And what else?—A. I believe they had a security record which they showed, in which they showed each security when purchased and when sold.

Q. That would not be kept in the general ledger?—A. I don't think they kept—I am not certain about that, whether they kept that in the ledger or a separate record. I believe they had a separate record for that, but I can't be sure. I don't recall.

Q. And you took the balances in the various accounts as they were shown by your predecessor's record, isn't that correct?—A. That is right.

Q. And as you check the book entries in and out, you arrived at a new balance?—A. That is right.

Q. And the new balance in your case would be August of 1934?—A. No, I went to May 31, 1934.

Q. May of 1934?—A. Yes, sir.

Q. And you arrived at that balance from figures that you saw in the books, is that correct?—A. I arrived at that balance from figures from the books, but subject to such verification as can be made of those figures from other sources.

Q. And the only figures that could be verified would be one, the cash on hand, and two, the investments, isn't that so?—A. I will have to see what those items are before I can answer that. Well, notes receivable that I verified.

Q. On whose books?—A. John Thomas Smith's.

349 Q. Notes receivable from whom?—A. Mrs. Wyatt and Dr. Ray McCabe, and Gaynor Electric Company.

Q. And what is the total of those loans?—A. \$40,656.54.

Q. When were those loans made?—A. When were they made?

Q. Yes.—A. Well, the items of Mrs. Wyatt is a demand note dated March 31, 1931.

Q. Is it indicated when that note was paid in your report?—A. It was not paid. There were some fluctuations in that account during the period. The demand note was for \$69,000 and then there were—there was an additional charge to that account for purchases of some General Motors Corporation stock for \$30,000, and then the account was reduced to the extent of \$79,000 for credit from proceeds of securities sold and dividends received.

Q. When did the loan originate?—A. Apparently March 31, 1931. I better verify that from the account definitely and I will tell you. My analysis started on October 31, 1931. When I started my investigation, but the note was paid March 31, 1931.

Q. You mean your examination that you made in July 1934—you mean that was for the period commencing—A. Commencing October or say November 1st, 1931, so that I have no—I started off with a balance of that account, see, of \$69,998.87.

Q. Well, your predecessor's report—A. Which came from my predecessor's papers, but in my report I stated that there was a demand note of that amount dated March 31, 1931.

Q. Yes; but, for instance, suppose your predecessor's return would indicate that as of October 1st, or October 31, 1931, there were securities in such and such an amount; is that right?—A. Yes.

Q. At Innisfail, or on the books of John Smith?—A. Yes.

Q. And then when you arrived you found securities in such
350 and such an amount of various corporations, and you traced that; isn't that correct?—A. And I examined all transactions of the intervening transactions.

Q. That would be on the purchase sales report?—A. That is right.

Q. Now, how did you do that from the books?—A. You are talking about the investments now?

Q. No; I am talking about the intervening transactions and the investments, yes.—A. In the investments, yes; I traced them from—I had my balance at the beginning of the period of all investments.

Q. Yes—A. I checked all—I checked all purchases that were recorded on the books to see if we had some evidence to support the purchases and the amounts at which they were recorded, and then I checked all recorded sales or credits to the investments, and examined whatever supporting evidence we could find to substantiate those credits.

Q. Well, now, that supporting evidence would be in what form, vouchers?—A. Vouchers.

Q. And that would be a journal ticket or what?—A. No; there would be a journal entry and a supporting memorandum of what the transaction was about. Of course, if it is a purchase, we have your invoice supporting it.

Q. You would have a bill from somebody?—A. That is right. You have a bill and you have the subsequent payment, all of which were checked in detail—all the cash receipts and disbursements were checked in detail.

Q. You checked all the bills and you checked the disbursements through John Thomas Smith's checkbook?—A. That is right, right to the cancelled check, you see.

Q. Did you make any reservations in your report, in your text?—A. Well, that present—

Mr. SHER. If your Honor please, if we are going into the report—

The COURT. Yes; I think you have to fish or cut bait on that report, sir.

351 Mr. PRATT. As I see it, your Honor—

The COURT. I know you would like to gratify your curiosity, but it is either in or out, and there is no middle ground.

Mr. PRATT. Well, I will let it go in. I would just as soon have it in, your Honor. My previous objection was—

The COURT. All right. Let it be marked.

(Marked "Plaintiffs' Exhibits Nos. 53 and 54.")

The COURT. Well, now, which is which?

The CLERK. John Thomas Smith is marked Exhibit No. 53 and Innisfail Corporation is marked No. 54.

The COURT. We will take an adjournment until Monday morning at ten-thirty. I will have to remind you members of the jury, what I have said heretofore. Do not let any person communicate with you directly or indirectly about this case; do not discuss it among yourselves or try to reach a decision until it is submitted. We will resume Monday morning at ten-thirty.

(Adjourned until Monday, March 28, 1938, at 10:30 A. M.)

NEW YORK, March 28, 1938, 10:30 A. M.

(Trial resumed)

Irving Dan Stern resumed the stand.

Cross-examination by Mr. PRATT (continued):

352 Mr. PRATT. If your Honor please, I move to strike out the testimony of Mr. Stern on the question of the costs of securities sold to Mrs. Smith and to the Innisfail Corporation by Mr. Smith in December of 1932, on the ground that his testimony in that respect has been demonstrated by cross-examination to be plain hearsay.

I also request your Honor to instruct the jury in connection with Exhibits 53 and 54, Mr. Stern's report, that they disregard any evidence which would tend to establish the cost of the securities sold by Mr. Smith in December of 1932.

The COURT. Well, now, in the first place, you do not say to you, that there is any inconsistency between Mr. Stern's testimony and the testimony of all the other witnesses for the plaintiff?

Mr. PRATT. Yes, I do, in connection with the cost to Mary A. Smith, that is patent in the report and in the testimony. He says that Mr. Smith sold 2,000 shares of General Motors to Mrs. Smith for \$104,000, on which Mr. Smith realized a loss of \$80,000, while the plaintiff's proof on that point through the other witnesses has been demonstrated plainly to be incorrect, so at least as to that particular transaction Mr. Stern's testimony is incorrect, as it was bound to be because it was taken from the books.

The COURT. I am sorry, but I am afraid I do not get your point.

Mr. PRATT. He testified that he obtained the figures on the costs of these various securities from work sheets that he had taken along with him at the time he made his examination in July of 1934, and that he had confidence in the figures as expressed in such work sheets. He himself had no knowledge nor did he check the costs of the various securities of Mr. Smith in December of 1932. He not having
353 done it himself, and taking that somebody else has said to be the cost; therefore he is testifying as to matters that are hearsay and if we take it as evidence we are deprived of the right of cross-examination.

The COURT. That is the reason I asked you if there was any difference between his testimony and the other testimony adduced on the part of the plaintiff in those respects.

Mr. PRATT. In no respect, however, but—

The COURT. Then it seems to me if the jury were instructed that this witness, Mr. Stern, is testifying from books that he examined and that his testimony is to be so regarded, and it is not to be regarded as evidence of the original transactions, the defendant's rights are protected. I think the jury understands it. He has stated to the jury what he found. That goes to the fidelity with which the records were maintained, but I will instruct the jury that Mr. Stern's testimony is not to be deemed testimony of the cost price.

Mr. PRATT. I will withdraw my objection.

Mr. SHER. That is all, Mr. Stern. If your Honor please, when we were introducing the dividend checks which had been received as a result of these alleged sales, we had mislaid the photostatic copies of the dividend checks paid to Mr. Smith on the total of 1,600 shares of Standard Oil of Indiana. Do you have any objection if I should introduce those now?

The COURT. Those antedated 1932?

Mr. SHER. I beg your Honor's pardon?

The COURT. Do those antedate 1932?

Mr. SHER. No, your Honor. After Mrs. Smith sold the 117 shares to Mr. Smith, we want to show Mr. Smith's receipt of the dividends on that stock.

The COURT. There were only 117 shares involved?

354 Mr. SHER. The testimony shows that he, Mr. Smith, previously owned 1,500 shares, and that he acquired 117 additional shares.

The COURT. I understood you to say 1,600 shares.

Mr. SHER. If I did, I was mistaken. Plaintiff offers in evidence dividend checks on 1,617 shares of Standard Oil of Indiana stock paid to Chemical Bank and Trust Company, and the account of John T. Smith credited, the dates of the checks being March 15, 1933, June 15, 1933, September 15, 1933, December 15, 1933, March 15, 1934, June 15, 1934, September 15, 1934, December 15, 1934, March 15, 1935, June 15, 1935, September 16, 1935, December 15, 1935, March 16, 1936, June 15, 1936, September 15, 1936, December 15, 1936, March 15, 1937, June 15, 1937, September 15, 1937.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit No. 55.")

Mr. PRATT. Counsel for the defendant concedes that the Government does not assert that there was fraud with intent to evade tax in any part of the deficiency assessed against John Thomas Smith other than in the sale to Mrs. Smith, and the sale to Innisfail Corporation.

Mr. SHER. Plaintiff rests, if your Honor please.

(Plaintiff rests.)

Mr. PRATT. If your Honor please, at this time the Government moves to dismiss the case brought by Mrs. Smith on the ground that there is no proof of the allegations contained in the complaint, and to dismiss also the case brought by Mr. Smith on the ground that

there is no proof of a loss sustained with respect to the sale to Mrs. Smith, and no proof of a loss existing in connection with the sale to the Innisfail Corporation; and further the Government
355 contends that in connection with the whole return—that is, with respect to the issues on those two sales, the plaintiff, Mr. Smith, has not shown an absolute presence of good faith in reporting the income tax liability for the year 1932.

The COURT. Is that your motion?

Mr. PRATT. Yes; your Honor.

The COURT. Motion denied.

Mr. PRATT. Exception.

The COURT. In each case, with exception to defendant.

DEFENDANT'S CASE

Mr. PRATT. I call upon the plaintiff to produce records showing the certificate numbers of the Chrysler stock obtained as a result of the exercise of the option by Innisfail Corporation in June of 1926.

Mr. SHER. There has been no notice to produce, your Honor. This is the first I have heard of it.

The COURT. Well, are you prepared to offer secondary evidence?

Mr. PRATT. Yes; your Honor.

The COURT. Is there any objection to secondary evidence?

Mr. SHER. I think in the interest of my client, I have to object, your Honor. Counsel could have served a notice to produce and the proof could have gone in in an orderly manner in that way. I do not think it is relevant besides.

The COURT. Let us see before any ruling is made. Why don't you gentlemen confer and see if the evidence that counsel for the defense wishes is present and available to you in court. It may be.

Mr. SHER. Mr. Doty says he does not have those figures.

356 Mr. PRATT. That is, the books do not contain such figures?

Mr. SHER. He says he does not have such figures here.

Mr. PRATT. Do you have—

Mr. SHER. Wait a minute. Put him on the stand if you want to question him.

Mr. PRATT. All right. Take the stand, Mr. Doty.

WILLARD DOTY, called as a witness for defendant, having been previously duly sworn, testified as follows:

Direct examination by Mr. PRATT:

Q. Mr. Doty, do you have a record which will show the certificate numbers on the Chrysler stock acquired by Innisfail Corporation in June of 1926, or thereafter, showing the certificate numbers on 26,477 shares of Chrysler stock?

Mr. SHER. I object to that as incompetent, irrelevant, and immaterial, and not calling for the best evidence.

Mr. PRATT. I am asking him if he has the record.

The COURT. He asked him if he has the records. Objection overruled.

Mr. SHER. Exception.

A. I was not in the employ of Mr. Smith or the Innisfail Corporation at the time that change was made. I believe there are records in the office showing the certificate numbers received at that time.

Q. Have you seen those records?—A. I am quite sure I have seen them.

Q. How long would it take you to get them down here?—
357 Could you call up?—A. I can't say. No; I would have to go myself. I do not think anybody up there could pick them up.

Q. How long would it take you to go up there and come back?—
A. If I were successful in finding them right away, I should be able to do it in around an hour.

Mr. PRATT. Well, if your Honor please, is there any way that we could arrange to get those records here? I assumed that all the records were here. Maybe I was wrong in so assuming.

The COURT. Is there any other evidence that you can go on with in the meantime?

Mr. PRATT. Yes; I can.

The COURT. Has the plaintiff any objection to having Mr. Doty procure that information as soon as he can?

Mr. SHER. I haven't any objection to the information going in your Honor, but I do feel that for the purposes of the record it is my duty, to protect my clients' interests, to make an objection.

The COURT. That is true, but I am only asking you if you have an objection to Mr. Doty's trying to get the information now?

Mr. SHER. No, your Honor. I haven't any objection to that.

The COURT. Now, will you cooperate with him so that he may? Then at the time something is offered it will be possible to make a ruling.

Mr. SHER. I want in all fairness to state what will be my position your Honor, because Mr. Pratt has had three days in which to serve notice to produce, and this type of examination is not designed in good faith.

Mr. PRATT. Well, now, may we have that stricken from the record your Honor?

358 The COURT. It does not make any impression on me. I hope it does not make any impression on the jury. The entire corporate history of the Innisfail Corporation was gone into in the plaintiffs' case, and the defendant should have an opportunity to meet anything that was developed. There is no bad faith at all.

Mr. SHER. That is not quite true. If the defendant wanted the production of some papers he knows enough to serve a notice to produce. He has had three days in which to do it. That is the thing I am criticising.

The COURT. When you are talking about a man's diligence, you can't charge a man in those things with bad faith. It may be the

in the course of the trial developments have occurred in connection with which Mr. Pratt was not prepared.

Mr. PRATT. That is it.

The COURT. And thus far I see neither lack of diligence nor absence of good faith.

Now, Mr. Doty, will you make all possible haste in getting those records?

The WITNESS. Yes, sir.

WALTER C. HAYWARD, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. PRATT:

Q. What is your occupation, Mr. Hayward?—A. Bank clerk.

Q. And you are employed—

Mr. SHER. I did not hear that.

The WITNESS. Bank clerk.

359 Q. And you are employed by the Central Bank?—A. Central Hanover Bank & Trust Company.

Q. Central Hanover Bank & Trust Company?—A. Yes.

Q. In what division?—A. In the stock bookkeeping.

Q. Stock bookkeeping?—A. Yes.

Q. Now, do you have with you the stock ledger of John Thomas Smith?—A. I have.

Q. Showing his holdings in Chrysler stock on various dates?—A. I have.

Q. Will you go back to March 16, 1926, and tell us the number of shares owned by or in the name of Mr. Smith on that date?

The COURT. March 19th?

Mr. PRATT. March 16, 1926.

A. March 16, 1926—

Mr. SHER. I object to this, your Honor. No proper foundation has been laid.

The COURT. Objection overruled.

Mr. SHER. Exception, please.

The WITNESS. There were 13,082 shares in his name on March 16, 1926.

Q. What was that number again, please? 13,082?—A. 13,082.

Q. And what was the balance on March 17, 1926?—A. March 17, 1926, there was a balance of 39,082.

The COURT. 39,082?

The WITNESS. 39,082.

Q. Were there shares that came in on the 17th?—A. Yes, there were 26,600 shares.

Q. Now, will you read the certificate numbers of those shares?—A. Certificate numbers 32074 to 32333 for 26,000 shares.

Q. Just a minute. 32074 to what?—A. 32333, a total of 26,000 shares.

Q. That would be 260 certificates?—A. 260 certificates of a hundred each.

Q. Of a hundred each?—A. Yes.

Q. And that brought the balance to 39,082 on March 17, 1926, that right?—A. 39,082, correct.

Q. Now, what is the date of the next transaction you have with respect to the issuance of Chrysler Common?—A. The next transaction was April—

The COURT. Do you mean issuance or transfer?

Mr. PRATT. Transfer of Chrysler Common.

A. (Continued.) Well, the next date of activity was April 16, 1926. There was 2,834 shares issued in his name, bringing a balance of 41,916.

Q. What are the certificate numbers on those 2,834 shares?—A. 35817 to 825, a hundred each. That is 900 shares, 8,597 for 68 shares 35826—

The COURT. Just a minute. 8,597 for what?

The WITNESS. For 68 shares.

The COURT. Yes.

The WITNESS. 35826 to 843, 100 shares each. That is 1,800 shares. Certificate 9518 for 47, and 9519 for 17 shares, making a balance of 41,916.

Q. You are reading, are you not, from the record of Chrysler Common?—A. Yes, Chrysler Common.

Q. And the balance on April 16, 1926, was 41,916 shares?—A. Right.

Q. What is the next transaction?

The COURT. Just a moment.

361 By the COURT:

Q. There were 900 shares, 68 shares, 1,800 shares, 47 and 17?—A. That is right.

Q. Did you say the total was 2,832 or 2,834?—A. 2,834. I am sorry.

Q. I can't make that 2,834. That is my difficulty.

Mr. PRATT. Two shares, did you call that?

The WITNESS. Oh, 8,596 for two shares.

Q. That is what was missing, 8,596 for two shares?—A. Two shares.

Q. Now, that added to the 2,832.—A. That is 2,834 altogether.

Q. How many did you say the total was?—A. The total was 41,916.

By Mr. PRATT:

Q. What is the date of the next transaction?—A. The next transaction was May 7, 1926, certificate for 48 shares were split up.

Q. Well, will you give us those certificate numbers?—A. 9518 for 47 shares, and certificates 9816 for 32 and 9817 for 15.

The COURT. 9518 for 47 shares was split up?

The WITNESS. That is right.

The COURT. And its place taken by 9816 and 9817?

The WITNESS. That is right.

The COURT. How much was 9816?

The WITNESS. 9816 for 32 shares and 9817 for 15.

Q. The next transaction, Mr. Hayward?—A. The next transaction September 15, 1927, 400 shares were transferred out of the account.

362 Q. Do you have any transactions in the books between May of 1926 and September of 1927?—A. No.

Q. You have 400 shares on what date?—A. On September 15, 1927.

Q. And those certificate numbers are what?—A. 35825, 826, 7, 8.

Q. And that brought the balance to what?—A. Brought the balance to 41,516.

Q. What was your next transaction?—A. The next transaction is July 20, 1928.

Q. What occurred on that date?—A. There were 7,753 shares issued in his name on that date.

Q. Certificate numbers?—A. Certificate numbers 116004 right down to 116080?

The COURT. 080?

The WITNESS. 080, and certificate 69243 for 63 shares.

Q. And the new balance?—A. The new balance was 49,269.

Q. What was the next transaction, please?—A. Next transaction, November 8, 1929.

Q. What was that date again?—A. November 8, 1929, 1,000 shares issued in his name.

Q. Certificate numbers?—A. 19095 through to 19104, and the balance on that day was 50,269.

Q. Next transaction?—A. Next transaction was December 30, 1931, 1,000 shares taken from the account.

Q. Certificate numbers?—A. 116029 down to 116038, 100 shares each, making a balance of 49,269.

Q. And the next transaction what date?—A. Next transaction is February 1st, 1932.

Q. What occurred on that date?—A. Certificates 116014 for 100 shares, was split up.

363 Q. Into what shares?—A. 166309 for 77 shares, 166310 for 20 shares, 116311 for 2 shares, and 166312 for 1 share. The balance was the same.

Q. No change in the balance?—A. No change in the balance.

Q. That is, it was still in the total of 49,269?—A. That is right.

Q. Now, when is your next transaction?—A. The next transaction is November 3, 1932, certificate 116078 for 100 shares, transferred out.

Q. For how many?—A. 100 shares.

Q. Transferred out?—A. Out of his name, leaving a balance of 49,169.

Q. What is that balance?—A. 49,169.

Q. And the next transaction?—A. Next transaction is November 7, 1932.

Q. And what occurred on that date?—A. There was 2,900 transferred out of the name. Do you want the numbers?

Q. Yes.—A. 19104 for 100 shares, 19095 for 100; 19096, 7, 8, 9 for 100 each, 19100, 1, 2, 3, 11606, 9, 70, 71, 72; 3, 4, 5, 6, 7, 11607, 9, 18, 11601, 5, 16, 17, 18, 19, 20, 21, and 22.

Q. What was the balance?—A. The balance on that date 46,269.

Q. Were there transactions after that in 1932?—A. The next transaction is November 9th.

Q. Well, let me have the balance on November, 9th.—A. Balance on November 9th was 45,169.

Q. And were there any changes in the balance after that?—A. Yes, there were several.

The COURT. During the year 1932?

Mr. PRATT. Yes.

The WITNESS. 1932, yes. The next transaction was on November 11th.

Q. Yes.—A. 900 shares were transferred out of the name.

364 Q. Bringing the balance to what?—A. Balance down to 44,269.

Q. The next date the balance changed was when?—A. The next change was on November 16, 1932.

Q. And the balance was what?—A. 1,238 shares transferred out of the name, leaving a balance of 43,037. Wait, there is an additional. On that 16th, on November 16th those certificates were really exchanged for new certificates; there was no change in the balance.

Q. Well then, what was the balance?—A. The balance was 44,269.

Q. 44,269?—A. Yes.

Q. Are there any other changes?—A. The next change was—the next date was a big date, and there was quite a few shares exchanged for other certificates.

Q. What would the balance be?—A. 45,869.

Mr. SHER. What date is that?

The WITNESS. November 17, 1932.

The COURT. 45,869?

The WITNESS. Yes.

Q. Now, let us have the date that the balance changed?—A. The next change is November 25; there was just an exchange of certificates and there is no change there. The next actual change is December 15, 1932, a thousand shares transferred out of the name, leaving a balance of 44,869.

Q. Are there any others in 1932?—A. On December 19, 1932, 300 shares transferred out of the name, leaving a balance of 44,569. The next transaction was December 22, 1932, 600 shares transferred out of the name, and the balance is 43,969. The next date is December 27, 1932, 100 shares transferred out of the name, leaving a balance of 43,869. On December 28, 2,077 shares, 2,000 shares were transferred out of the name, leaving a balance of 41,869. On December 29, 3,500 shares, transferred from the account, of which 151 shares went back, and the balance on that date was 38,520.

Q. Is that the last transaction in 1932?—A. That is the last transaction.

Mr. PRATT. No further questions.

Mr. SHER. No cross-examination.

Mr. PRATT. That is the last witness for the Government with the exception of Mr. Doty and those records, your Honor.

The COURT. Because of the delay I am going to take a recess until two o'clock. I will have to repeat what I said to you previously.

(The Court admonished the jury and a recess was taken until 2:00 P. M.)

(2:00 P. M.)

AFTERNOON SESSION

Willard Doty resumed the stand.

By Mr. PRATT:

Q. Mr. Doty, have you records with you or do you have the records of the Innisfail Corporation?—A. Not exactly of the Innisfail Corporation. It is a record of all the Chrysler certificates that we had in the officer-owned, and the certificate numbers.

Q. Do you have such a record of Innisfail Corporation showing the numbers of certificates on Chrysler Common for the 26,477 shares?—A. Yes.

Q. Of stock acquired in 1926 by Innisfail?—A. Yes. This records shows—

366 Mr. SHER. Just a minute, Mr. Doty. At this time, your Honor, I should like to object to this line of testimony because the avowed purpose is merely with the propriety of Mr. Smith's 1926 income return. I think Mr. Pratt will concede that. It is an effort to effect the 1926 return of Mr. Smith or of Innisfail Corporation and it has no bearing on this case at all.

Mr. PRATT. Well, it may have that effect in addition to others, but it certainly is material.

The COURT. It seems to me that if the defendant desires to meet any testimony in the plaintiffs' case having to do with the organization of Innisfail, its capitalization or any property acquired when the corporation was organized, the defendant has that right.

Mr. SHER. Oh, I did not mean by my statement that, your Honor. I am quite willing—as a matter of fact we put that testimony in ourselves, but as I understood from Mr. Pratt, I thought it was very clear that the avowed purpose of this line of testimony is to open up Mr. Smith's 1926 income return to show the exchange of Chrysler Preferred for Chrysler Common, which was properly reported at that time, and that depends upon certain exchanges which were made pursuant to the option. Now, if that is the purpose, and I think it was manifested or stated to me that it was.

Mr. PRATT. Well, here is the statement, I said by this I expected to show the facts from which could be drawn a reasonable inference

that at the time the option in favor of Mr. Smith, which he transferred to Innisfail Corporation in June of 1926, which option carried with it the right to exchange 5,000 shares of preferred Chrysler for 26,477 shares of common, and with these facts I offer to show

367 that it is reasonable to infer that any rights under that option had been exercised prior to the date on which it is indicated in the minute book that such transfer was entered.

Mr. SHER. And that thereafter the tax liability for 1926 should have been borne by Mr. Smith. That is your point?

Mr. PRATT. That would evidently follow as one result, and the other result that would follow would be that there would be no consideration for the exchange of stock of Innisfail Corporation back in 1926, and it would follow also that it is another act which shows the relationship between Mr. Smith and the Innisfail Corporation.

Mr. SHER. Well, as far as relationship, if your Honor please, it is something entirely different from what I understood before. I have no objection to that. I was objecting because of my impression that Mr. Pratt was seeking to open up a year six years prior to the year with which we are concerned in this case. We can't go back into the 1926 return. If he is going to show something along that line, we have a right to put in all our testimony to throw light on why the return was filed as it was filed.

The COURT. I have no purpose in permitting the jury to be misled for the year 1926. Let us understand that clearly. The only purpose for which any such testimony that this witness may be able to give concerning the original capitalization of Innisfail on its original property holdings would be with reference to the plaintiff's own testimony on the same subject.

Mr. PRATT. That is satisfactory to the defendant.

The COURT. Very well.

368 Q. Do you have such a record of Innisfail Corporation?—

A. From the records available at the office, the certificate numbers would be as I have them here.

Q. Is it a record of Innisfail?—A. Not a record of Innisfail, a record of the entire holdings of Chrysler stock, which was held by Mr. Smith and Innisfail, Mr. Smith's trust, and the Innisfail holdings.

Q. Is the information you have there taken from records of Innisfail Corporation?—A. The records that I found in the office, certificate numbers assigned to the holdings of the Innisfail Corporation.

Q. Is it a record of Innisfail? I do not propose to argue with you. I want to establish that first.—A. It is a record of Innisfail contained with other records in connection with Chrysler stock.

Q. Then read from the records of Innisfail and tell us what the certificate numbers were on the Chrysler Common stock acquired by Innisfail Corporation in June of 1926?—A. Certificate number 05122 for 80 shares, of which Innisfail owned 77, and the other three were assigned to somebody else; certificate numbers 27949 to 27958 for 1,000 shares; certificate number—

Q. Read a little slower, please?—A. 27949 to 27958, 1,000 shares; 27959 to 28028, 7,000 shares; 30666 to 30675, 1,000 shares; 30676 to 30705, 3,000 shares.

The COURT. 30705?

The WITNESS. That was the last number; yes.

Q. Will you read that number again, please?

The COURT. How many?

The WITNESS. Three thousand. 30676 to 30705, 3,000 shares; 32074 to 32213, for 14,000 shares; and 311437 to 311440, 400 shares, and that totals 26,477 shares.

369 Q. I am sorry. Will you read that last, please.—A. The last four hundred is 311437 to 311440.

Q. For how many shares?—A. Four hundred.

Q. Is that the record of the certificate numbers as it stood back in July of 1926, Mr. Doty?—A. I obtained them from records in my office that would indicate those were the certificate numbers which Innisfail owned at that time, those exchanges.

Q. At that time?—A. Yes.

The COURT. By "at that time," what do you mean?

The WITNESS. At the beginning of the corporation, June 1926, when the exchange was made.

Mr. PRATT. No further questions.

Cross examination by Mr. SHER:

Q. Mr. Doty, I will show you a photostatic copy of a letter dated June 14, 1926, and ask you whether or not you recognize the signature of that letter [handing]?—A. Signature of Mr. Anthony J. Rosso.

Q. And is that the Mr. Anthony J. Rosso whose name has been mentioned in this case?—A. Yes; it is.

Mr. SHER. The plaintiff offers in evidence photostatic copy of a letter dated June 14, 1926, to Mr. Frank Bassett, from Innisfail Corporation, by Anthony J. Rosso, vice president, the original having been introduced in evidence before the United States Board of Tax Appeals.

Mr. PRATT. No objection.

(Marked "Plaintiffs' Exhibit No. 56.") (Read to jury.)

370 Q. Mr. Doty, I will hand you photostatic copy of a document and ask you whether or not that is the option agreement referred to [handing]?—A. It looks like—it is a photostatic copy of the agreement.

Q. Yes; of the option agreement.—A. Of the option agreement.

Mr. SHER. Plaintiff offers in evidence a photostatic copy of the option agreement between Frank Bassett and John T. Smith, the original of which also was introduced in evidence before the United States Board of Tax Appeals.

Mr. PRATT. I object to the introduction of this into evidence, if your Honor please, on the ground that it is immaterial.

Mr. SHER. It is the option agreement that we have both been talking about, if your Honor please, the option agreement referred to in the bill of sale from Mr. Smith to Innisfail Corporation, when he organized the Innisfail Corporation and transferred the stock together with this very option.

Mr. PRATT. The question at issue is whether at the time, June 14, 1926, whether or not the option was exercised by Innisfail Corporation as a separate entity from John Smith. Now this is no proof that the option was ever exercised. This is an agreement dated the 28th of June 1925, signed by Frank Bassett—

Mr. SHER. And John T. Smith.

Mr. PRATT. Accepted down in the corner, John Smith, where under the two individuals, up until June 20, 1927, have certain rights in connection with the exchange of Chrysler stock. The issue here is whether or not the transfer was effected from Mr. Smith to Innisfail on June 14, 1926, or thereafter. If the transaction and 371 the option was exercised prior thereto, it has a material bearing on the issues of the case. This is the agreement itself and I say it is immaterial.

The COURT. Well, the last exhibit was an exhibit which referred to that option, didn't it?

Mr. SHER. Yes, your Honor; that letter constitutes the exercise of that option.

The COURT. Might it not be argued that if the jury are entitled to inquire into this subject at all, they are entitled to know all there is to know about it?

Mr. PRATT. Yes. There is no doubt that an option existed. The question is the identity of the party who exercised the rights under the option, whether Innisfail exercised the rights under the option.

The COURT. I understood you had no objection to the letter and it seems to me it would complete it if this agreement go along with it. Objection overruled.

Mr. PRATT. Exception.

(Marked "Plaintiffs' Exhibit No. 57.")

Mr. SHER. I also offer in evidence, if your Honor please, the letter dated June 14, 1926, to Innisfail Corporation, from F. Bassett, in reply to the letter sent by Innisfail Corporation, which was just introduced in evidence before the option. This is again a photostatic copy of a document introduced in evidence before the United States Board of Tax Appeals.

Mr. PRATT. A document which is not in the possession of the defendant's counsel.

Mr. SHER. Naturally.

Mr. PRATT. I make the same objection, if your Honor please

372 The COURT. The same ruling.

Mr. PRATT. Exception.

(Marked "Plaintiffs' Exhibit No. 58.") (Read to jury.)

By Mr. PRATT:

Q. Mr. Doty, do you know whether or not at that time Mr. Smith had in his possession 26,000 shares of Chrysler stock?—A. At what time?

Q. At the time this letter of June 14, 1926, was written?—A. I was not with Mr. Smith on June 14th, 1926.

Q. Were there anything in your records which would indicate that the Chrysler Common was with Mr. Smith or in the hands of Mr. Bassett?

Mr. SHER. May it please the Court, I object to that, because the documents themselves show that the Chrysler Common had been deposited with Mr. Smith as collateral under the agreement.

The COURT. It is always possible that the documents are mistaken. The proof should be shown.

The WITNESS. I have no records to show that the stock was in the office. I was concerned with a record which had to do with the opening of the books of Innisfail and the recording of that 26,477 shares.

Q. Well, do your records of Innisfail Corporation indicate that at any time in June of 1926 or thereafter you had among your assets 5,005 shares of Chrysler preferred?

Mr. SHER. May it please your Honor, we are perfectly willing to concede that the Chrysler Common stock was in Mr. Smith's name at this time? I think we could shorten the testimony—

373 Mr. PRATT. I am asking about possession.

The COURT. Well, the question was directed to the 5,005 shares of preferred.

Mr. SHER. We will concede that was in the hands of F. Bassett, as shown by the agreement. We will concede that.

Mr. PRATT. You will concede that the 5,005 preferred was in the hands of Mr. Bassett?

Mr. SHER. As collateral under the option agreement.

Mr. PRATT. In June 1926?

Mr. SHER. In June 1926.

Mr. PRATT. And at that time the 26,400 shares of Chrysler was in Mr. Smith's possession?

Mr. SHER. Together with other stock deposited by both parties as collateral under the agreement.

Q. Do your records of Innisfail Corporation—

The COURT. Now, just a minute. Does that clearly state the situation?

Mr. PRATT. As the situation stood on June 14th, 1926, yes sir. No further questions.

Mr. SHER. That is all.

Mr. PRATT. The Government rests, if your Honor please.

Mr. SHER. The plaintiff rests. No rebuttal. If your Honor please, I move that your Honor direct a verdict for Mary A. Smith for the full amount sought in her complaint.

The COURT. Any opposition?

Mr. PRATT. We oppose the motion, naturally.

The COURT. On what grounds?

Mr. PRATT. Well, on the ground that there is no proof in
374 the case of Mrs. Smith's intention, namely, to sell the stock
117 shares of Standard Oil of Indiana. The burden on that
issue is squarely upon the plaintiff; whether or not title passes
whether or not a person intends to sell anything of value to another
person is a question of intent. There are two sides of the transac-
tion. All we have heard from is the buyer's end in connection with
the 117 shares. Further, there is no delivery proven in the case.
The securities came from Mr. Smith's box and after the sale went
right back into the box. There is further objection that the cost
has not been established.

The COURT. Wasn't there testimony of Mr. Doty as to the cost of
Mrs. Smith's stock?

Mr. SHER. Yes, your Honor.

Mr. PRATT. Our objection to that is that it was not competent
proof of cost, and there is the contractual relationship of vendor and
vendee.

The COURT. Well, what do you say as to the penalty?

Mr. PRATT. As to the penalty, we have the illustration—

The COURT. I am speaking of Mrs. Smith's case now entirely.

Mr. PRATT. The penalty, it is the Government's contention that in
this transaction, or that in the case of Mrs. Smith, it was imperative
for Mrs. Smith to prove the absolute good faith of herself in this
transaction. The fact that she was unavailable as a witness, because
she was ill, should not work to the disadvantage of the Government.
The cases were consolidated for trial upon agreement by both sides.
If your Honor feels over our objection that the burden of proof as
to the fraud was upon the defendant rather than the plaintiff
375 we have a situation where Mrs. Smith was completely un-
available to both sides as a witness. There is a complete
failure of proof on the element of good faith. In addition to that,
because of the inability of Mrs. Smith to be physically present the
Government was completely handicapped in any effort in accordance
with your Honor's ruling it might have needed to make in order to
prove affirmatively the presence of fraud.

The COURT. The Government answered ready, when the case was
tried, didn't it?

Mr. PRATT. Absolutely, and it came from the stand from Mr.
Smith that Mrs. Smith was not available as a witness.

The COURT. Well, now, does the Government desire a continuance
in order that Mrs. Smith may be examined under deposition or
otherwise?

Mr. PRATT. No, if your Honor please, we desire a dismissal of the
case brought by Mrs. Smith.

The COURT. In order to simplify the task of the jury as much as
possible, I am going to direct a verdict in Mrs. Smith's favor at
least as to the fraud penalty in her case, and that amounts to

\$167.97. I will take it up with you more at length when the case is fully submitted to you.

Mr. PRATT. May I record an exception, your Honor?

Plaintiff's motion for directed verdict

Mr. SHER. May I except to your Honor's denial of my motion for a directed verdict for the balance of the suit, and ask that the case be submitted to the jury on that basis. Now, if your Honor please, I move that your Honor direct a verdict for John Thomas Smith for the full amount sought in his complaint.

The COURT. That motion is denied.

376 Mr. SHER. I respectfully except to your Honor's denial of my motion for a directed verdict, and affirmatively move that the case be submitted to the jury on the facts.

Defendant's motion for a directed verdict

Mr. PRATT. If your Honor please, the Government proposes to make a motion in the alternative on the issues in the case brought by John Thomas Smith—that is, that the Government moves for a directed verdict as to the case brought by John Thomas Smith, and in the event of your Honor's denial of that motion we seek leave affirmatively to have the issues go to the jury for their deliberation.

The COURT. Now, if I understand it, you both move for a directed verdict, but in the event of denial you reserve the right to go to the jury. That is the effect of the motion that has been made?

Mr. SHER. Yes.

Mr. PRATT. Yes.

The COURT. Both motions are denied with exception. As to the penalty of Mrs. Smith, that motion has been made, with exception to the defendant.

Mr. PRATT. Has your Honor denied my motion?

The COURT. Yes.

Mr. PRATT. Exception.

Mr. SHER. Exception.

(Mr. Pratt summed up the case to the jury on behalf of the defendant.)

(Mr. Sher summed up to the jury on behalf of the plaintiffs.)

(Whereupon the Court admonished the jury and an adjournment was taken until March 29, 1938, at 10:30 A. M.)

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Charge of the court

The COURT (BYERS, J.). Members of the Jury: The reason you were not given the charge yesterday afternoon at four o'clock is that it seemed important that you should begin your deliberations in this case with fresh minds early in the morning. The case is a little complex in some of its aspects and it will be necessary for you to be very thoughtful and careful in considering the evidence and reaching

a conclusion, and at the risk of saying what some of you already know and perhaps all of you thoroughly understand, I am going to discuss the case rather fully:

In the first place, you are not confronted with the kind of task that is ordinarily presented to a jury of deciding under conflicting versions of occurrences what really took place: It is customary, as you know, or those of you who are experienced in serving on juries for you to listen to the narrative of persons who say they saw a certain thing, participated in a certain transaction, and such-and-such a thing took place, and then another group says that something else took place, and you have to decide where the truth probably lies. This is not that kind of case.

The evidence in this case is substantially undisputed, so that you are not confronted with the task of deciding what probably happened. What you will have to do is to take this evidence under careful consideration and decide what it proves.

As you know, the plaintiffs, Mr. Smith in the one case, and his wife in the other, are suing the Government officially and you will consider that the Government is really defending the case, to recover a portion of the 1932 income tax paid by them individually. That is the zone of the controversy. That is the territory in which the controversy has been conducted.

To begin with the first principles, the law says that a man
378 must pay a tax upon his income and also a tax upon his gains, so that if a man has an income of \$1,000 or we will say \$2,000 from all sources, and during the course of the year he has bought, say, 10 shares of stock for \$1,000, and sold it for \$2,000, then in computing the taxable income, he includes the \$2,000 item of his ordinary income and the \$1,000 gain that he made. Now, equally, the law says that if he purchased stock, we will say for \$1,000, and sold it during the year for \$500, he suffered a loss, and that in reporting his income tax he shows the Government the receipt of his \$2,000 ordinary income and the loss of \$500, and he subtracts the \$500 from the \$2,000, in order to show the amount upon which he should pay the tax. That is the kind of case that this is.

Mr. Smith reported, and you will probably wish to look at his income-tax return for the year 1932. It is Plaintiffs' Exhibit 1. He reported a large income—I think it was in excess of \$200,000, and he also reported losses arising from the sale of stocks and asserted the right to deduct those losses from his \$200,000 or more of income in order to reach the net amount upon which his tax should be computed. He comes into court as the plaintiff in this case and asserts that he is entitled to a return of the money that he is suing for because the Government improperly failed to give him credit for those losses.

The thing that you will have to determine is whether he has proven that he actually sustained those losses. That is the precise controversy that is submitted to you. The amount that he is suing for in all is \$53,758.24, and we are able to bring that amount down into three general heads; the loss that he asserts by reason of the sale of

2,000 shares of General Motors stock that he says he made to his wife and the interest on that sum. Those two amounts are \$11,940. We will consider this separately for the sake of clarity.

Secondly, the amount that he said he lost through the sale of a group of stocks to Innisfail Corporation. That asserted loss and the interest together amount to \$24,824.75, and that is the second item that we will take up for consideration.

The third item is \$17,594.72. That is the penalty that the Government asserts that it was entitled to collect because the Government says that he improperly sought to deduct the first two items. You will take that up as a third subject for consideration, and I shall discuss it.

The only witness who has testified before you who has a stake in this controversy, who stands to win or lose as a result of the judgment to be entered in this case, is Mr. Smith himself. He is what the law calls an interested witness. The testimony of an interested witness is just as competent as the testimony of any other witness, but in weighing it, in deciding the value that you will attach to it, there must be present in your minds at all times a realization that his testimony proceeds from the lips of one who is financially to be affected by the judgment in the case.

I think that perhaps gives you a general understanding of the controversy and what it is that you are called upon to decide.

So that you may not be confused by these figures that I have stated to you, I am telling you now that I propose to submit to you separate questions involving the dollars and cents so that you can answer those questions separately and embody the results of your conclusions in your verdict.

Taking up this first element of loss as asserted by Mr. Smith, I want to say that I will take up Mrs. Smith's case at the close, because that is quite simple. The first element of loss asserted by Mr. Smith has to do with the sale of stock to his wife on the 29th of December 1932, the stock being 2,000 shares of General Motors. He does not assert that he and Mrs. Smith sat down across a table and that he learned that the market price was about \$12.50 a share, and he said to her, "I will sell you these 2,000 shares of stock at \$12.50," and she said, "All right. I will buy it," and that she sat down and wrote out a check and handed the check to him and he handed her the stock. It is not as simple as that, but he says that in effect that is what took place. That transaction really involves two elements as the evidence developed. First, the method of accomplishing the sale and, secondly, the sale itself. He says that the method employed involved a resort by him to the payment of indebtedness that he owed to her that had been created in April of 1932. He said that he borrowed \$50,000 from her at that time. And so your first inquiry will be as to that. Are you convinced that he did borrow \$50,000? The evidence that he offers to sustain that consists in the check that Mrs. Smith drew to his order plus the evidence that that check went into his personal bank account, plus

the evidence that he paid the same amount on account of one of his loans. I think he produced a check of his own and I think it was established, and I think it is not contradicted, that his own personal loan was reduced by a matter of \$50,000 at that time. It is true that that was not the ordinary commercial method of handling a transaction. If a man borrows money from a bank or from a third person he ordinarily gives a note or some other written evidence of the borrowing. But this was a transaction between husband and wife, and he says in effect, that while I have no note to indicate this indebtedness, my business records in my office show that that is what the real nature of the transaction was. On that subject, of course, you will bear in mind that the matrimonial relation is such that ordinarily husbands and wives are not too businesslike and they are not too technical in handling their money affairs.

The evidence of the loan as offered by Mr. Smith has not been controverted. It is for you to say, if it persuades you fairly and reasonably, that that is what took place. Assuming that you
381 find that there was that loan, you then move forward to the month of December, and you must understand the loan in order to understand the nature of the transaction that took place on December 29th.

Mr. Smith says that what happened was this: He said to his wife, "Now, instead of my taking 2,000 shares of General Motors out into the market and having my broker sell them and taking the proceeds to pay you what I owe you, you take the stock at this market price." She said, "That is entirely satisfactory"; and he says that is what took place. At the same time and at the same interview it was arranged between them that he should buy from her 117 shares of Standard Oil of Indiana and that he should pay her the market price for that stock, and that those two transactions having been agreed upon and having been effected, there was a cash balance due from him to her which he paid, and his check for that cash balance, a sum in excess of \$26,000 or \$27,000, I forget which, which was produced in evidence.

I think thus far the transaction is very easy to follow and you will probably have no difficulty in concluding what took place. But there is a complication in connection with this that it is necessary for you to study very carefully. Now, if those 2,000 shares of stock of General Motors had been the only stock in that corporation that Mr. Smith had owned, there would be no difficulty about it. The fact is that he owned a great many thousands of shares of stock in that corporation, and he said that as this sale was made in order to register a loss, it would be a proper deduction from his income tax, and he selected from his large holdings certain particular stocks that he bought at about \$52.50 a share, I think, and he sold it to her at about \$12 or \$12.50. I do not undertake to speak precisely as to the figures, but I think it is reasonably accurate. And you see, if that is so,
that is to say, that he carried that intention into effect, he sold
382 her the block of stock that had cost the \$52.50 or thereabouts

a share at \$12 or so, thereby losing 40 points on the 2,000 shares, something over \$100,000.

What you will have to ascertain is whether he has demonstrated that that is what he did. His Exhibit 6, I think I am right as to the number, is a collection of certificates, stock certificates, and he says these are the certificates representing the 2,000 shares of stock that he sold to his wife. Now, you must understand something about the nature of stocks and stock certificates. Stockholders in a corporation, large or small, are entitled to share in the net assets of the corporation. That is the nature of stockholdings. You can think of the net assets as a sort of indistinguishable mass of property, and in order that a person's right to participate in the net assets of the corporation may be freely dealt in and may be freely identified, certificates are issued against it. One man may have 10 certificates, another man may have 1,000, and a third may have 100,000, and those certificates merely show that he is entitled, the one man to 10 shares, the next man to 1,000 shares, and the next man to 100,000 shares in this mass. The man's right to participate in the net assets passes according to custom and usage by the transfer of the certificates. The certificates identify a man's holdings, and because they are paid they also identify the date when he became entitled to those holdings.

These particular certificates are numbered 5441 to 5480, I believe. Is that right, or isn't it?

Mr. PRATT. That is right.

Mr. SHER. That is right.

The COURT. And they bear a date that indicates that Mr. Smith became the owner of those certificates, if I am not mistaken, in January of 1929. Is that correct?

Mr. SHER. Yes.

383 The COURT. In January of 1929 the market value of the General Motors stock, I believe was in the neighborhood of \$10 or \$11 a share; is that correct?

Mr. PRATT. That is right, sir.

Mr. SHER. No, there is no evidence of that.

Mr. PRATT. The average price of his holdings.

The COURT. Well, I will withdraw the statement. Pay no attention to it. But the fact is that in January of 1929, when these particular certificates appear to have been issued, the market price was very much lower than \$52 a share.

You must understand that phase of the situation very clearly because it was Mr. Smith's purpose, frankly and candidly revealed, to make the sale to his wife in order to establish a loss. He could not establish a loss if he sold stock that cost him about the same as the market value on December 29, 1932, and there would be no loss in that transaction at all. He would have to sell her stock that had cost him very much more, because the loss that he sought to realize was the difference between what he paid for the stock and what he sold it for. If he paid \$52.50 and he sold it for \$12 or thereabouts, his

loss was 40 points. But if he had acquired it at about \$12, and sold it at about \$12, there was no point in the transaction at all. He says that it was clearly in his mind, it was his purpose and his intention to sell her the particular stock that he bought in October of 1929, the 2,000 shares that he bought in October, I believe it was about October 18th. He did buy some 2,000 shares at that time and the broker's statement is in evidence, and the price that he paid is in evidence. The only trouble is that the stock that he bought on October 18th is not represented by these certificates that he says represent the stock that he sold to his wife. He intended that that result should follow, but through some circumstances that we know something about and perhaps we can understand, that particular stock was not sold to Mrs. Smith—I mean, the certificates representing 384 the stock purchased October 18, 1929, are not the certificates constituting Plaintiff's Exhibit No. 6. That stock represented by those certificates was acquired, I think, in January 1929.

So the evidence leaves you in this position: He says he intended to do a certain thing, and here is what he did and he shows you the fact. Now, if he did not carry that intention into effect, then he has failed in his proof. That is all there is to it. This was stock that he had in his own safety deposit box. This was not stock that was held by a broker or a custodian or anybody else. This was his own stock.

It is true that a good deal of this stock was in a collateral loan but that does not deprive him of his privilege or property or control of it. In fact, he told you how he substituted in that collateral certain stock for other stock. That is one of the fairly confusing aspects of the case, but the thing that Mr. Smith has undertaken to do has been stated clearly. He has undertaken to show you a sale to his wife on December 29, 1932, of stock that he bought October 18, 1929, and if he has failed to show that, if instead of showing that he has shown to you that he sold and transferred to his wife stock that he bought in January 1929, then he just has not made out that much of his cause of action. It is for you to say whether the intention that he said he had, and in all human probability did have, as I have tried to explain to you, whether that intention was carried out or whether it was frustrated. If it was carried out he is entitled to his credit; if it was not carried out then he has failed of his proof. There is the first branch of this case.

The second question has to do with these sales to the Innisfail Corporation. I am not going to enumerate the stocks because you will have this return before you and you will examine it, and that return lists the stocks. Now, that aspect of the case, I think, requires a little general discussion. I do not know how familiar you are 385 with corporations or with the rules of law that have to do with corporations. I am going to try to explain a little on the subject in the hope of clarifying your task.

Corporations were devised perhaps 200 years ago, maybe less, as a method whereby a number of persons could group together and carry

on business. The number did not have to be limited, and the amount of capital did not have to be limited, and the share that each one would pay in the business did not have to be limited. You will see it was a very useful device. Moreover, as time went on, it became apparent that a group of persons associating themselves together in corporate form had really brought into existence an artificial being, which bore the name of the corporation, and which owned the corporate property, and that artificial being was quite separate and apart from the individuals who were the stockholders, and that was necessarily so for a number of reasons.

In the first place, their personnel is changing, people are moving in and out with the group of holders, but the corporation continues right along. It was independent of the personalty of the stockholders. Moreover, the corporation would borrow money or incur credit, and it did so in the eyes of the public because it owned property and the rights of creditors were restricted to damages against the corporate property and not against the stockholders. That is the reason that corporations have become such an elaborate device for transacting business.

In the course of dealing with these enterprises, the law had to develop, and pretty soon lawyers and the courts for convenience referred to what they called the corporate entity—this separate thing which existed outside of the presence of the stockholders, the company itself. True, you can't go up and touch it; you can't see it; you can't paint a picture of it; but you know it exists. It is a sort of mental concept, and it is a very useful concept in the development of the law which applies to corporations and corporate dealings.

Those of you who are mathematicians know what is meant by the fourth dimension. Now, nobody ever saw the fourth dimension, and even the most expert mathematicians get into difficulties when they try to depict the fourth dimension. Yet the fourth dimension is a most useful thing in mathematical reasoning. And so the corporate entity is a most useful thing to the law and to lawyers and to courts and to investors and stockholders in dealing with corporations. In that respect it is distinguished from partnerships except in one branch of the law when three or four men are partners, and there is not anything created apart from them. They constitute the partnership and they own the partnership property. There is an exception to that that you are not interested in, but in the corporation field, the corporation owns the property and the stockholders do not. That is generally the setup.

You must understand something of that because you are now asked to deal with the Innisfail Corporation. You are asked to determine whether there were really substantial sales of stock made by Mr. Smith to the Innisfail Corporation. While I have described to you the legal theories attending the corporate entity, it is my duty to tell you that the law if it can help itself does not close its eyes to actualities. The law prefers to deal with substance and not with form.

Now, what does that mean applied to this case? That means this: It is your duty to say whether this Innisfail Corporation ever had for the purposes of this case an existence and identity separate and apart from Mr. Smith. It is your duty to go right to the facts in the case and not to be turned aside by the appearance of things. Stated quite concretely, it is your duty to say whether these sales of stock comprehended in the second branch of this case were actual transfers of stock and property out of Mr. Smith and into something
387 that existed separate and apart from him, or are these transactions to be regarded as simply, for instance, a transfer by Mr. Smith's left hand, being his individual hand, into his right hand being his corporate hand, so that in truth and fact there was no transfer at all. That is the question that you must answer, in deciding whether the losses he says he is entitled to deduct because of these transactions that he describes as sales to the Innisfail Corporation took place.

In order to answer that question it is obvious that you must understand what this Innisfail Corporation is or purports to be, or was or purported to have been, and that is the reason that all this tedious evidence went in covering the years 1926, 1927, 1928, 1929, 1930, 1931 and 1932. It must have seemed deadly boring to you. It was to me. But it is a necessary part of the case.

What was this corporation during the year 1932? Did it have such an existence as to constitute it something separate and apart from Mr. Smith? Well, in the first place, it occupied no physical part of the world outside of his office beyond his desk or his filing cabinets. I had no payroll. It is true that some of the corporate funds were used to pay a portion of Mr. Doty's compensation, but this thing that is talked about, this Innisfail Corporation, had no payroll in the ordinary accepted sense.

You may recall that I asked if it had any creditors, and the answer was no, that it had no creditors. It paid franchise taxes and it filed income-tax returns, but did it have a separate existence, something that you could point to, something that your senses could appreciate or were those transactions, as I say, merely in effect transfers from Mr. Smith to himself? I think I have told you substantially all about the corporation except this: I asked Mr. Smith what the business of the corporation was and he said, well, it was to hold securities that he purchased and turned over to . . . That is all its business was.

388 It is important that you understand this branch of the case because the mere fact that Mr. Smith owned all the stock in the corporation does not prove that the corporation did not have an existence separate and apart from him. Now, take that as the law. The first time, so far as I know, that this question was presented to the courts was in a case in which a husband and wife owned all the stock of a motor agency, the Buick, an agency out in one of the western cities. That is the kind of an enterprise that the Court was dealing with. The taxpayer and his wife owned all the stock in it. Yo

can visualize that corporation as transacting a business. You know what motor agencies are without my telling you, and the Court said that the mere fact that the husband and wife transferred their stock for the purpose of setting up losses to a corporation that they owned entirely did not deprive them of the right to assert those losses.

Now, is this that kind of a corporation? Did this corporation, this Innisfail Corporation, really exist, really function as something separate and apart from Mr. Smith? That is the question for you to answer. And then, of course, you can't close your eyes to what the rest of the evidence is with respect to these transactions. The rest of the evidence is that the transfers having been made, and I am not going to discuss the transfers, because it is not disputed that the motions were gone through of transferring stock. The stock was not sold in the open market; it continued in the Innisfail Corporation. The dividends, such as there were, were paid, two or three or four of them paid dividends continuously. You may be enabled to reach a conclusion by contrasting that condition with the condition that followed, that these securities had been sold in the open market and there had been no continuing interest directly or indirectly on the part of the former owner.

389 A word more upon this subject. The law is that a man may organize his affairs so that he will not pay any more taxes than the law requires that he should. There is not any conclusion to be drawn unfavorable to a taxpayer because he does that. The tax law requires that a man should pay all that the law says that he must pay, but the law does not require that he should be a philanthropist in dealing with the Government and pay more than the law itself exacts, so that you are not to draw any unfavorable inference because the evidence may persuade you that elaborate precautions had been taken to keep Mr. Smith's taxes down to a very minimum. That is an entirely legitimate thing for him or for anybody else to do. But in doing that he may not misstate the facts. He may not misrepresent the facts.

And that brings us to the third branch of the case, this penalty assessment. As to that, it is impossible to separate it. It is impossible to allocate a portion of the penalty assessment to the transactions with Mrs. Smith and another portion of the penalty assessment to the Innisfail transactions. The penalty part of the tax, this \$17,594 item, has to be handled as a whole. The law is that if any part of any deficiency—do you know what deficiency means? In the filing of this return, Mr. Smith laid bare these transactions and he paid a tax. The Collector says in effect, "Your tax was deficient, and you should have paid this thirty-odd thousand dollars more." That is the deficiency. If any part of any deficiency is due to fraud with intent to evade the tax, then 50 per centum of the total amount of the deficiency, in addition to such deficiency, shall be assessed; so that the precise question for you to deal with in connection with this third branch of the case is, has there been a

showing, according to the evidence, of fraud with intent to evade the tax?

The law makes some distinction between evasion and avoidance.

There seems to be a general feeling that a man may avoid a 390 tax by organizing and conducting his affairs so that the minimum amount will be paid, but he may not evade a tax. I am not sure that that language is entirely convincing. I am not sure that there are two separate and distinct ideas that are presented by those words. It is my duty to tell you that that is what the law is and not to criticize the law.

What is there in this case that will help you to reach a conclusion as to whether there was an evasion on these two elements of taxation? Fraud involves misrepresentation, a statement of a thing that is not true. What is there in this case that will help you to reach a conclusion on that? Well, so far as the Innisfail transactions are concerned, I am frank to say I see no evidence of any misrepresentation of fact. The transactions were reported as sales, and when the Government investigated the sales the Government encountered all the information that has been laid before you. There is no misrepresentation that I can see. If you can see it it is your opinion that governs, not mine.

With respect to the sales or transactions with Mrs. Smith, there is an element in the case which will give you pause. On that subject, if you should find that there was no sale to Mrs. Smith in December of 1929 of stock purchased in January of 1929, it will be for you to say whether there is such a misrepresentation as would justify you in denying to the plaintiff the recovery of this \$17,000 this penalty assessment.

Now let us go over these questions that I am going to submit to you first to be sure that you understand them:

The first question is this: Is plaintiff entitled to recover from the Collector for the loss he asserts arising from the alleged sale by him of 2,000 General Motors stock to his wife on December 29, 1932? Then I have written in brackets the amount that he is entitled to deduct, as he says, of \$9,983.25, and the interest is \$1,357.52, and the total is stated in pencil.

391 No. 2. Is he entitled to recover from the Collector for the loss he asserts, arising from the alleged sale by him of sundry stockholdings to Innisfail Corporation on December 29, 1932? Again, the amount is stated \$21,851.40, interest \$2,971.35, or a total of \$24,822.75. That is a separate question.

No. 3. If you find for the plaintiff in answer to both questions you will award him in addition the sum of \$17,594.72, being the amount of the penalty assessed in connection with his 1932 tax.

No. 4. If you find for the defendant in answer to either or both of the foregoing, you will answer the following question:

Was the deficiency in tax payable for 1932 by John T. Smith due to fraud upon his part with intent to evade the tax, either as to the General Motors stock transferred to his wife, or as to the miscel-

aneous stocks transferred to Innisfail? If you answer "Yes," there can be no refund of the penalty. If you answer "No," then your verdict should be for the plaintiff as to the amount of the penalty of \$17,000 and some-odd dollars.

So much for Mr. Smith's case.

As to Mrs. Smith's case, there is a very simple issue presented. Did she sell 117 shares of Standard Oil of Indiana to Mr. Smith on December 29, 1932? Well, the evidence to support the sale consists in the certificates, the endorsements, the issuance of new certificates to Mr. Smith. If she did make such a sale, then you are entitled to consider the evidence that he has continued to own that stock ever since. Then, that sale results in a loss which she is entitled to deduct from her income tax return for 1932, and that amount is \$335.93, and the interest is \$45.68.

As to the penalty assessment in her case, I have already directed you to find a verdict for her in that amount, which is \$167.97.

Now I will be glad to have you tell me at this time if there is anything that has not been clarified in the case. Is there anything in the charge of the Court that is not clear to you, or is there anything that you would like me to discuss further, or is there any aspect of the case that you would like me to discuss further?

JUROR No. 9. Your Honor, there is one aspect of it that I would request that you discuss further, and that is this: I know it is customary usage, but I just wonder whether it is so in this particular instance. We will say that a buyer buys a hundred shares of stock, we will say, in January of 1929, he buys another hundred shares, we will say at a different price, and in December of 1929, he buys that on margin. In other words, he puts up that stock and receives a loan against it. Now, that stock, that 200 shares which he has purchased is part, we will say, of three or four thousand shares that is held by the broker. Now, those 200 shares which he has purchased come in and are added to that 4,000 which the broker possesses for other accounts. Now, they are placed in collateral loans with banks. Now, we will say in 1932 this party decided to sell a hundred shares of stock—

THE COURT. Being half of the two transactions that you are talking about?

JUROR No. 9. Yes; and he sells it, and there is a delivery of that stock, and he claims in his return that the stock that he has sold is that which he bought in October of 1929, and the stock which is delivered against that sale is taken out of the 4,200 shares which is held as collateral on broker's loans to the broker at the bank. There is no way, as far as I know, in which the exact stock which he has purchased in October 1929 can be taken out of the collateral loan. In other words, the broker delivers in 100 shares the amount that he takes down from the collateral loan and, therefore, in delivering the exact certificates which were purchased in 1929, against the sale effected in 1932, and I wondered whether that would have

393 any bearing on a decision as to the delivery of the exact certificates in this case.

The COURT. Well, I am not sure that it would have any bearing but I think I can answer your question under the circumstances that you have stated, because the individual would have the right to direct the broker to sell the original stock or the later stock, and he would have the right to select the stock which he wishes to have sold in order to set up a loss if he chooses; but if he does not instruct the broker, if he leaves it to the broker's discretion, and he simply says, "Sell 100 shares of stock," and the broker acts upon his own initiative and takes the first stock that he comes to, then the law presumes that it was the earliest stock in point of time that was so sold.

JUROR No. 9. I see. Thank you.

The COURT. Are there exceptions to the charge?

Requests to charge—Exceptions

Mr. SHER. May I respectfully except to your Honor's statement that Mr. Smith testified that the only business of Innisfail Corporation was to hold stock which he purchased?

The COURT. Yes; your exception is noted; and in that connection, let me say this, members of the jury, if I have misstated the testimony you pay no attention to what I have said, because it is your memory and your understanding of the testimony that counts, not what the Court says about it.

Mr. SHER. May I respectfully except to your Honor's statement to the jury that the stock that Mr. Smith purchased on October 28, 1929, is not represented by the certificates which he transferred to Mrs. Smith in December 1932?

The COURT. Your exception is noted.

Mr. SHER. May I also respectfully except to your Honor's statement that in January 1929, when the certificates bore a date of issuance, the market price of General Motors stock was much less than \$52 a share?

394 The COURT. Well, I will withdraw that statement, because evidently I was mistaken as to what the testimony on the subject was; but let me recall this incident to you as long as my statement has been challenged: Mr. Doty was on the stand and I said to him if the certificates represented by or in Exhibit 6 were actually the stock that was sold to Mrs. Smith would he have reported a gain or a loss on the transaction, and he said there would have been a gain of about \$3,000, having reference to the January purchase of 2,000 shares of General Motors stock.

Mr. SHER. May I respectfully except and request your Honor to direct or instruct the jury that the stock certificates which were actually delivered to Mrs. Smith in pursuance of the alleged sale to her in December 1932 were available for the inspection of the Internal Revenue agents the same as all the other documents in this case, which we have introduced?

The COURT. I believe that to be true. I don't think the Government has asserted that there was anything in Mr. Smith's files that was not open for the inspection of the Government. I think that is the fact.

(Addressing jury:) While counsel are conferring I am going to ask you to look at this paper and see if you can read my handwriting. I am not sure that you can.

(The Court hands paper to the Foreman.)

Mr. SHER. May I ask your Honor to charge—

The COURT. I have not taken up the requests yet.

Mr. SHER. I am sorry.

The COURT. I am only dealing with exceptions to the main charge. Have you noted all your exceptions?

Mr. SHER. Yes, your Honor.

The COURT. Any exceptions for the defendant?

Mr. PRATT. No, your Honor.

The COURT. Now, do you think you can read that paper?

The JURY. Yes.

395 The COURT. Now just pay attention for a moment to me, please, and do not look at that. These are the requests that have been submitted by the plaintiffs:

I. "A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price."

"* * * a contract of sale or a sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conduct of the parties."

I so charge. And, in that connection, let me emphasize that any sale involves necessarily two distinct persons, a seller and a buyer.

I am going to change in your second request the word "affected" to the word "controlled." Do you object to that?

The request is this as amended by the Court:

II. For income-tax purposes involving the year 1932, the validity of a sale is not controlled by the fact that the purchaser is the husband or wife of the seller.

Mr. SHER. I respectfully except to your Honor's declining to charge that it is not affected by.

The COURT. Your exception is noted. And I am going to do the same with respect to the third request.

III. For income-tax purposes involving the year 1932, the validity of a sale is not controlled by the fact that the purchaser is a corporation, all of the stock of which is owned by the seller.

I tried to explain that to you when I referred to the earlier case.

Mr. SHER. May I respectfully take the same exception to that?

The COURT. Yes, surely.

The fourth request is denied as to the first paragraph.

Mr. SHER. May I respectfully have an exception?

The COURT. Surely. I will charge the second paragraph, which has to do with Mrs. Smith.

If the plaintiff, Mary A. Smith, transferred title to the securities in question to Mr. Smith for a consideration, you must find for the plaintiff, Mary A. Smith.

I so charge.

Do you want me to charge No. 5, or have I covered that?

Mr. SHER. I think you have covered 5, your Honor, and I think 6, too.

The COURT. Yes. All right. Now, No. 7 is declined on the ground that the subject has already been covered.

Mr. SHER. Yes, your Honor, I think you have.

The COURT. And the same as to 8.

Mr. SHER. May I respectfully except, your Honor?

The COURT. Yes. No. 9 is declined.

Mr. SHER. May I respectfully except?

The COURT. Except as charged.

Mr. SHER. May I respectfully except to that?

The COURT. No. 10 has been amended, that is, to Mrs. Smith.

No. 11 is declined with exception.

No. 12 is declined with exception, and No. 13 is declined with exception.

Mr. SHER. May I request two or three additional?

The COURT. You will have to hand them to me. Well, the plaintiff makes this request:

XIV. The mere fact that a corporation does business only with its sole stockholder is not enough to deny its separate existence.

I am inclined to grant that request, because I think it is a correct legal proposition, but in granting it I am bound to call your attention to the fact that that is one circumstance which you are required to take into consideration in seeking to ascertain whether there was in truth and in fact an actual and substantial sale or group of sales involved in this case.

Mr. SHER. May I have just a moment, your Honor? I am sorry.

The COURT. All right. A request has been preferred, which I think you are probably entitled to have, but not quite in the form in which it is offered. I will say to you in considering this case as a whole, it is proper for you to bear in mind that the evidence demonstrates that during certain of these years from 1926 to 1932 and perhaps all of them, the Innisfail Corporation paid franchise taxes and income taxes. Otherwise, it is declined.

Mr. SHER. May I respectfully have an exception, your Honor?

The COURT. Surely.

For the defendant, I will charge Request No. 1.

1. In each of these cases the taxpayer has the burden of clearly showing a right to a deduction of the losses claimed as the result of the sales in issue and the amount of such losses.

No. 2 is declined with exception to the defendant.

3 is declined with exception to the defendant.

No. 4. The income tax statute authorizing the deduction of losses resulting from the sale of securities does not contemplate mere fluctuations in the value of the securities, but requires that the losses from said sales be actually sustained during the taxable year and evidenced by a closed transaction, which finally determines the existence and the amount of the loss.

I so charge.

No. 5. The tax laws deal with realities and the statute permitting the deduction of losses allegedly sustained as the result of sales require that such losses be actual and real and sustained in a transaction having a regular business purpose.

I so charge.

398 No. 6. While a sale for tax purposes is not to be disregarded because of the intent by the seller to establish a loss; on the other hand, a mere gesture without the vital intent to change ownership is not to be recognized as a sale merely because the transaction has some of the appearances of a sale.

I so charge.

No. 7 is declined with exception to the defendant.

No. 8. The property after being sold must be out of the control and domination of the seller and outside of his power and disposition.

I so charge.

No. 9 is declined with exception to the defendant.

No. 10 is declined in that it has been covered in the main charge with exception to the defendant.

No. 11 is declined for the same reason. I think it has been covered with exception.

I think 12 has been covered on the subject of burden of proof, and it is declined with exception.

No. 13. In considering whether there was an actual sale on the transactions between John Thomas Smith and Mary A. Smith, and between John Thomas Smith and the Innisfail Corporation, you should understand the fact that because stamp taxes were paid as a result of the transfers of stock into the names of Mary A. Smith and Innisfail Corporation, does not of itself establish that there was an actual sale.

I so charge.

I think that 14 has been covered with respect to the penalty. It is declined with exception.

The same as to 15 with exception.

16 is declined as already charged.

Mr. PRATT. May I have an exception noted?

The COURT. Surely.

No. 17 is declined with exception. I think it is already covered.

399 No. 18 I think is covered. Declined with exception, and I think 19 is already covered. Declined with exception.

No. 20. If you believe that John Thomas Smith had not proved the cost to him of the stock he claims to have sold to the Innisfail

Corporation and of the stock he claims to have sold to Mary A. Smith, then you may find for the Government on that issue, that is, that the additional tax assessed by the Commissioner of Internal Revenue by reason of disallowing the claimed losses on said alleged sales was properly made and properly collected.

That means that if there is a deficiency in proof on the part of Mr. Smith and on the part of Mrs. Smith as to the cost of the securities actually sold, it will be for you to say if there is a deficiency in proof. I am not suggesting that there is. And the same applies to Mrs. Smith. That covers 20 and 21.

22 is declined with exception. I think the subject is fairly well covered.

23 is declined for the same reason.

Mr. PRATT. Exception, your Honor.

The COURT. Yes, surely.

24 is declined as already charged...

Mr. PRATT. Exception.

The COURT. I think that is covered in the main charge.

25 has to do with this third branch of the case, the penalty assessment:

25. To determine whether or not the fraud penalty in the action brought by John Thomas Smith was properly assessed, you need not determine that there was no fraud because of the testimony of John Thomas Smith that he intended no fraud; the question is to be decided from a consideration of all of the facts in the case and a normal and reasonable inference to be drawn from such facts, and although intention is a state of mind, its character is to be established as other facts are established, by weighing all of the evidence.

I so charge.

400 26 is declined as already charged; 27 declined as already charged; 28 declined as already charged.

Mr. PRATT. Exception.

Mr. SHER. May I respectfully except to the granting of instructions Nos. 5, 8, 20, and 21?

The COURT. Yes. Your exception is noted.

Now, members of the jury, will you please undertake your deliberations and perhaps you better think for a moment or two what exhibits you wish to take to the jury room. You are entitled to take them all. I am merely suggesting to you that you will probably look at Exhibit 1, which is the return, and you may wish to look at No. 6, the group of certificates. If you think of anything else at this time do not hesitate to say so. If you do not take these exhibits to the jury room, and you may later send for any additional exhibits which you require. They will be in the custody of the Clerk.

(The jury thereupon retired from the courtroom at 12:10 P. M.)

(The jury returned to the courtroom at 2:15 P. M., and the following took place):

The COURT. I have a request from the jury stating that they would like to have the testimony read regarding the allocation of numbers of the General Motors stock owned by John T. Smith.

(The stenographer read the part of the testimony referred to.)

The COURT. That is the testimony that you desired to have read?

JUROR No. 9. Yes, your Honor, but there is one other question that came up in the discussion in the jury room, and I wondered whether any testimony has been brought out, whether there was some talk in the testimony about a stock split-up of General Motors. I wondered whether there had been any testimony to the effect that there had been a stock split-up since October 1929, between
401 October 1929, and when the 2,000 shares of General Motors was sold in 1932.

The COURT. Do you mean a stock split-up by the General Motors Corporation?

JUROR No. 9. Yes; in that there may have been a split-up three for one, in which case the original 2,000 shares would have been 6,000 shares.

The COURT. It is not my recollection that there is any such testimony in the case. Is that so or not? It is not contended by either side that there was any split-up in the General Motors stock between January 1929?

Mr. SHER. That is right, your Honor.

Mr. PRATT. That is right, your Honor.

Mr. SHER. May I request that all the testimony on this point be read?

The COURT. No; you may request it, but I will deny it. I am simply concerned with what the jury wishes to have read.

JUROR No. 2. There is one more question, your Honor, in reference to that 2,000 shares. I think there was testimony to the effect that the 2,000 shares was included in some certificates of 30,000 shares that were issued. I would like to have that testimony read.

The COURT. Very well.

(The stenographer read the testimony relating to the point in question.)

The COURT. Is that what you desire?

JUROR No. 2. Yes.

The COURT. Will you please retire and resume your deliberations?

(The jury returned to the jury room for further deliberations.)

(The jury returned to the courtroom at 3:40 P. M. and announced that they had reached a verdict.)

The CLERK. Madam Forewoman and gentlemen of the jury: Have you agreed upon a verdict?

The FOREWOMAN. We have.

402 The CLERK. How say you?

Verdict

The FOREWOMAN. Now, your Honor, should I read your questions and give our answers?

The COURT. If that is the way you have done it, yes, please.

The FOREWOMAN. The plaintiff is entitled to recover from the Collector for the loss he asserts from the alleged sale by him of 2,000 shares of General Motors stock to his wife on December 29, 1932. We find for the plaintiff.

The COURT. The answer is yes?

The FOREWOMAN. Yes.

On the second question as to whether he is entitled to recover from the Collector for the loss he asserts arising from the alleged sale by him of sundry stockholdings to Innisfail Corporation on December 29, 1932, the answer is "No."

For the deficiency in the fourth question as to fraud, we find "No" in both of your questions, so that he is refunded the amount, and for Mrs. Smith we answer "Yes" for Mrs. Smith. Shall I read the question?

The COURT. No, I think you have only one question in Mrs. Smith's case, and you say she recovers?

The FOREWOMAN. That is right.

The COURT. Now, the answers to the separate questions as made by the jury, as I understand it, indicates that the plaintiff is entitled to a verdict for a sum of money made up of the following items:

First, the sum of \$9,983.25, plus interest of \$1,357.52, making \$11,340.77, representing the loss that he asserted in connection with the sale of 2,000 shares of General Motors stock to his wife.

He is not entitled to recover anything representing the loss that he asserted in connection with the sales of sundry stockholdings to the Innisfail Corporation.

With reference to the items embraced in the deficiency of 403 \$17,594.72, the jury finds that there was present no evidence of fraud with reference to either the sale of stock to the wife or the alleged sale of securities to the Innisfail Corporation with intent to evade the tax and, therefore, the plaintiff is under the verdict of the jury to recover the amount of the deficiency of \$17,594.72.

Does that correctly interpret your verdict?

The FOREWOMAN. Yes.

The COURT. Now, will you compute the amounts made up of these sums, and perhaps counsel better do it or we better all do it to be sure.

Mr. PRATT. Your Honor, may I have the record indicate a motion—

The COURT. Yes; but wait until the verdict is entered.

The CLERK. The total is \$28,935.49.

The COURT. We all agree that those figures are correct?

Mr. SHER. Yes.

Mr. PRATT. Yes, your Honor.

The COURT. That is the amount of the verdict reported by the jury in favor of John T. Smith, in his case.

Now, you have been directed to find a verdict for Mrs. Smith as to \$169.79 of penalties. How do you find?

The FOREWOMAN. For her.

The COURT. I guess you have answered the question.

How do you find in her case as to the loss asserted by her traceable to the Standard Oil shares of Indiana. You find for Mrs. Smith, do you not?

The FOREWOMAN. Yes.

The COURT. So that the verdict in Mrs. Smith's favor is made up of \$381.61 plus \$167.97, or \$549.58, and that is the verdict of the jury in Mrs. Smith's case so entered and recorded.

Motions to set aside verdict.

Mr. PRATT. If your Honor please, the defendant wishes to move at this time to set aside the verdict of the jury on the issue of the sale to Mrs. Smith in the case of John Thomas Smith as being contrary to the weight of the evidence.

404 The COURT. Motion denied. Exception.

Mr. PRATT. And the same motion with respect to the issue of penalty in the case of John Thomas Smith.

The COURT. Motion denied. Exception. ✓

Mr. PRATT. And the same motion with respect to the findings in favor of plaintiff Mrs. Smith, in connection with the issue present in that case.

The COURT. Motion denied. Exception.

Mr. SHER. If your Honor please, the plaintiff John Thomas Smith moves to set aside so much of the verdict as fails to grant him \$24,822.75, the loss alleged to have been sustained on the sales of securities to Innisfail Corporation, as against the law, against the evidence, for all the reasons set forth in Section 549 of the Civil Practice Act.

The COURT. Motion denied. Exception.

The jury is discharged with the thanks of the Court for the care and attention which you have given to this rather complex case.

Plaintiffs' requests to charge.

1. "A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price."

"* * * a contract of sale or a sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conduct of the parties."

2. For income-tax purposes involving the year 1932, the validity of a sale is not affected by the fact that the purchaser is the husband or wife of the seller.

405. "Provided an actual sale does take place which takes the property entirely out of the reach of the seller, it cannot matter whether the purchaser is one or another. * * *

Where a married woman may hold a separate estate, she may be a purchaser from her husband for fair value * * *

3. For income tax purposes involving the year 1932, the validity of a sale is not affected by the fact that the purchaser is a corporation, all of the stock of which is owned by the seller.

4. If the plaintiff, John Thomas Smith, transferred title to the securities in question to Mrs. Smith and to Innisfail Corporation for a consideration, you must find for the plaintiff, John Thomas Smith.

If the plaintiff, Mary A. Smith, transferred title to the securities in question to Mr. Smith for a consideration, you must find for the plaintiff, Mary A. Smith.

5. "The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted."

6. There is no legal objection to making a sale for the purpose of taking a tax loss.

7. If there was on the part of the plaintiff, John Thomas Smith, no "fraud with intent to evade tax," then you must find for the plaintiff John Thomas Smith at least in the amount of \$17,594.72.

If there was on the part of the plaintiff, Mary A. Smith, no "fraud with intent to evade tax," then you must find for the plaintiff Mary A. Smith at least in the amount of \$167.97.

8. "Fraud with intent to evade tax" means a corrupt and dishonest design carried out for the purpose of cheating the Government of taxes. It means that the taxpayer deliberately falsified his return. If the plaintiff, John Thomas Smith, honestly believed at the time he signed and filed his return that he had made a sale of the securities in question to Mrs. Smith and to Innisfail Corporation, then he is entitled to recover the fraud penalty of \$17,594.72, even though as a matter of law the transactions did not constitute sales.

The same is true of Mrs. Smith's right to recover the fraud penalty of \$167.97 with respect to her belief in signing and filing her return.

9. You are instructed that plaintiff, John Thomas Smith, is entitled to a verdict of at least \$17,594.72, the amount exacted from him as penalty for "fraud with intent to evade tax."

10. You are instructed that the plaintiff, Mary A. Smith, is entitled to a verdict of at least \$167.92, the amount exacted from her as penalty for "fraud with intent to evade tax."

11. As a matter of law, on the uncontradicted evidence in the case, the cost to the plaintiff, John Thomas Smith, of the 2,000 shares of General Motors stock which he delivered to Mrs. Smith in December 1932 was \$104,350.

12. If the plaintiff, John Thomas Smith, intended to deliver to Mrs. Smith the 2,000 shares of General Motors stock which he had purchased on October 28, 1929, for \$104,350 and instructed Mr. Doty that delivery was to be made of that lot of stock and if in June 1932, Mr. Doty had allocated certificates No. D5441-60 to the lot acquired October 28, 1929, at \$104,350, and the certificates were en-

dorsed for transfer to Mrs. Smith in December 1932, the plaintiff, John Thomas Smith, is entitled to compute his cost at \$104,350.

13. If in June 1932, Mr. Doty, allocated certificates No. D5441-60 to the lot acquired by the plaintiff, John Thomas Smith, October 28, 1929, \$104,350, and the certificates were endorsed for transfer to Mrs. Smith in December 1932, the plaintiff, John Thomas Smith, is entitled to compute a cost of \$104,350 on this stock.

14. The mere fact that a corporation does business only with its sole stockholder is not enough to deny its separate existence.

15. The jury is entitled to consider that the Government treated the Innisfail Corporation as separate and distinct from Mr. Smith during the years 1926 to 1937, inclusive, and collected thousands of dollars from it in respect to its gains and profits.

Defendant's request to charge

Now comes Joseph T. Higgins, defendant, in each of the above entitled cases, consolidated for trial before this Court and respectfully requests and moves that the Court charge the jury as follows:

1. In each of these cases the taxpayer has the burden of clearly showing a right to a deduction of the losses claimed as the result of the sales in issue and the amount of such losses.

2. The determination by the Commissioner in holding that the alleged sales by John Thomas Smith to his wife, Mary A. Smith, and by John Thomas Smith to the Innisfail Corporation, did not constitute deductible losses is presumptively correct.

3. The determination of the Commissioner of Internal Revenue in holding that the alleged sale by plaintiff Mary A. Smith of 117 shares of Standard Oil of Indiana stock, in December 1932, did not constitute a deductible loss to Mary A. Smith is presumptively correct.

4. The income-tax statute authorizing the deduction of losses resulting from the sale of securities does not contemplate mere fluctuations in the value of the securities, but requires that the losses from said sales be actually sustained during the taxable year and evidenced by a closed transaction, which finally determines the existence and the amount of the loss.

5. The tax laws deal with realities and the statute permitting the deduction of losses allegedly sustained as the result of sales require that such losses be actual and real and sustained in a transaction having a regular business purpose.

6. While a sale for tax purposes is not to be disregarded because of the intent by the seller to establish a loss; on the other hand, a mere gesture without the vital intent to change ownership is not to be recognized as a sale merely because the transaction has some of the appearances of a sale.

7. To constitute a sale the transaction should be such that all of the interest in the property be transferred forever without the possibility of the property ever being returned.

8. The property after being sold must be out of the control and domination of the seller and outside of his power and disposition.

9. The fact that in this case 2,000 shares of General Motors 408 was transferred into the name of Mary A. Smith, in December of 1932, and that thereafter she continued to receive the dividends payable on such stock is just as consistent with the idea of the transfer of securities as the result of a gift to her as with the idea of a transaction of sale.

10. In considering whether there was an actual sale as the result of transactions had between John Thomas Smith and the Innisfail Corporation, you may take into consideration the fact that these are alleged sales between a corporation, of which John Thomas Smith is the sole stockholder and principal officer, and that this relationship justifies the closest scrutiny and examination to prevent tax evasion for the reason that the relationship itself imports the possibility of fraud, secret reservations, and agreement.

11. In considering whether there was an actual sale on the alleged sale by John Thomas Smith to Mary A. Smith, you may take into consideration the fact that these are sales between husband and wife, and that this relationship justifies the closest scrutiny and examination to prevent tax evasion.

12. The burden of proof is upon John Thomas Smith, not only to establish that the alleged sales by him to the Innisfail Corporation were actual sales on which he experienced actual realized losses, but also to establish his good faith in connection with these sales with reference to his income tax liability for the year 1932.

13. In considering whether there was an actual sale on the transactions between John Thomas Smith and Mary A. Smith, and between John Thomas Smith and the Innisfail Corporation, you should understand the fact that because stamp taxes were paid as a 410 result of the transfers of stock into the names of Mary A. Smith and Innisfail Corporation does not of itself establish that there was an actual sale.

14. If you find that the alleged sales of stock by John Thomas Smith to the Innisfail Corporation were not made with an intention to transfer actual ownership and did not constitute a final and irrevocable transfer of such stock, and that those alleged sales were made for the purpose of giving the appearance of an apparent loss for income tax purposes without actually selling the stock or incurring an actual loss, then you may find for the Government on that issue, that is, that the additional tax assessed by the Commissioner of Internal Revenue by reason of disallowing such claimed losses and the imposition of penalty assessed by the Commissioner upon his finding of fraud were properly assessed and collected from the plaintiff, John Thomas Smith.

15. If you find that the alleged sales of 2,000 shares of General Motor stock by John Thomas Smith to Mary A. Smith were not made with intention to transfer ownership and did not constitute final and irrevocable transfers of that stock, and that those alleged

sales were made for the purpose of giving the appearance of apparent loss for income tax purposes without actually selling the stock and incurring an actual loss, then you may find for the Government on the issue of the additional tax assessed by the Commissioner of Internal Revenue and the assessment and collection by the Commissioner of the penalty imposed thereon as the result of his finding of an attempt to evade the tax.

16. Regardless of John Thomas Smith's intention as to the alleged sales by him to the Innisfail Corporation, and regardless of whether there was a transfer of ownership, real or apparent, if you find that the Innisfail Corporation was merely an instrumentality of John Thomas Smith, under his complete control and domination, and was only in effect an agent of John Thomas Smith, then you may find for the Government on that issue, namely, that the additional tax assessed by the Commissioner of Internal Revenue by reason of disallowing the losses claimed in connection with said sales was properly collected from John Thomas Smith.

17. Regardless of John Thomas Smith's intention as to the alleged sales by him to Mary A. Smith, if you find that Mary A. Smith was merely an instrumentality of John Thomas Smith, under his complete control and domination, and was only in effect an agent of John Thomas Smith, then you may find for the Government on that issue; that is, that the additional tax assessed by the Commissioner of Internal Revenue by reason of disallowing those claimed losses and the penalty assessed by the Commissioner were properly done and properly collected from John Thomas Smith.

18. Regardless of John Thomas Smith's intention as to the alleged sales by him to the Innisfail Corporation and regardless of whether there was a transfer of securities, if you find that after the completion of those transactions, John Thomas Smith had suffered no actual loss by reason of his relationship to the Innisfail Corporation, and all the other evidence before you, then you may find for the Government on that issue; that is, that the additional tax assessed by the Commissioner of Internal Revenue by reason of disallowing those claimed losses was properly done and properly collected from John Thomas Smith.

19. Regardless of John Thomas Smith's intention as to the alleged sales by him to Mary A. Smith, if you find that after completion of those transactions John T. Smith had suffered no actual loss by reason of his relationship to Mary A. Smith, and all the other evidence before you, then you may find for the Government on that issue; that is, that the additional tax assessed by the Commissioner of Internal Revenue by reason of disallowing those claimed losses and the penalty assessed by the Commissioner were properly done and properly collected from John Thomas Smith.

20. If you believe that John Thomas Smith had not proved the cost to him of the stock he claims to have sold to the Innisfail Corporation and of the stock he claims to have sold to Mary A. Smith, then you may find for the Government on that issue; that is, that the

additional tax assessed by the Commissioner of Internal Revenue by reason of disallowing the claimed losses on said alleged sales was properly made and properly collected from John Thomas Smith.

21. If you believe that Mary A. Smith had not proved the cost to her of the stock she claims to have sold to John Thomas Smith, then you may find for the Government on that issue; that is, that the additional tax assessed by the Commissioner of Internal Revenue by reason of disallowing the claimed losses on said alleged sale was properly made and properly collected from Mary A. Smith.

22. With respect to the sales claimed to have been made by John Thomas Smith to the Innisfail Corporation, if you find that the stock certificates were not actually delivered from the possession and control of John Thomas Smith to the possession and control of the Innisfail Corporation, then you may find for the Government on that issue; that is, that the additional tax assessed by the Commissioner of Internal Revenue by reason of disallowing the claimed losses as the result of said alleged sales was properly made and the tax properly collected from John Thomas Smith.

413 23. With respect to the sale claimed to have been made by Mary A. Smith to John Thomas Smith, if you find that the stock certificates were not actually delivered from the possession and control of Mary A. Smith to the possession and control of John Thomas Smith, then you may find for the Government on that issue; that is, that the additional tax assessed by the Commissioner of Internal Revenue by reason of disallowing the loss claimed as the result of said sale was properly made and properly collected from Mary A. Smith.

24. If you find that plaintiff John Thomas Smith used Innisfail Corporation for the sole purpose of reducing his income taxes and not for the purpose of normal business enterprise then you may find that John Thomas Smith for income-tax purposes did not experience a deductible loss as a result of his alleged transfer in December of 1932 of securities to Innisfail Corporation. *Gregory v. Helvering*, 293 U. S. 465.

25. To determine whether or not the fraud penalty in the action brought by John Thomas Smith was properly assessed, you need not determine that there was no fraud because of the testimony of John Thomas Smith that he intended no fraud; the question is to be decided from a consideration of all of the facts in the case and a normal and reasonable inference to be drawn from such facts, and although intention is a state of mind its character is to be established as other facts are established, by weighing all of the evidence.

26. Although John Thomas Smith has testified in this case that in his opinion it was lawful for him to establish tax losses by means of alleged sales of securities to the Innisfail Corporation, you may, nevertheless, find that the fraud penalty in this case was properly assessed against John Thomas Smith, if you decide that from all of the evidence John Thomas Smith's opinion in that connection was totally and obviously unreasonable.

ANALYSIS OF COST OF 13,500 SHARES CHRYSLER CORPORATION

CHRYSLER - C
Page 2

Lot #3-1,000 shares

Oct. 1929 - Purchase of 1,000 shs. 44 (Com. \$150.)

Forward

\$ 80,874.93

\$ 44,150.00

Lot #4-4,418 shares

Dec. 1929 - Purchase of 4,418 shs. 33

145,596.00

Lot #5-2,772 shares

Received through reversion of principal of trust fund created for benefit of J. Vincent Smith and Bernard J. Smith

May 10, 1926 - Above beneficiaries received in exchange for 524 shares Chrysler Corporation Preferred stock:-

2,772 shs. Chrysler Common stock at market value of \$31.00 per share
(Profit on exchange reported in 1926)
(tax returns for beneficiaries)

\$85,932.00

July 20, 1928 - Received rights to subscribe to new stock on basis of one new share for six old shares

Market Values

2,772 shs. Chrysler Corp. (74)

205,128.00

2,772 Rights (\$2.71)

7,622.00

Total

212,751.00

Cost assigned to 2,772 shs.

205,128.00 X 85,932.00

212,751.

82,853.00

Lot #6 - 4,037 shares

See Lot #1 - Cost of 7,600 shares

Less-Cost assigned to 7,600 Rights 7/20/28

209,972.00

7,527.53

Adjusted Cost of 7,600 shares

202,444.47

Deduct-Cost of 3,400 " sold 1931

90,627.00

Balance-Cost of 4,200 " (\$26.65 per sh.)

111,824.47

Cost of 4,037 shares 26.65

107,606.05

TOTAL COST 13,500 SHARES

460,881.98

ANALYSIS OF COST OF 15,500 SHARE CHRYSLER CORPORATION

SCHEDULE D-4

Lot #1 - 1,011 Shares

July 16, 1925-Purchased 1,000 shs. Maxwell "A"

\$209,975.00

Dec. 1925-Exchanged above stock for 9,600 shs. Chrysler Corporation.

July 20, 1926-Received rights to subscribe to new stock on basis of one new share for six old shares

Market Values

9,600 shs. Chrysler Corp. (74)
9,600 Rights (22.75)

\$712,400.00

20,900.00

\$733,300.00

Total

Cost assigned to Rights

20,900
\$209,975 X 209,975.00

7,823.55

Purchase of 2 Rights - \$2.75

5.50

Subscription to 1267 shs. New Stock - \$57.50

72,802.50

Cost of 1267 shs. New Stock

85,381.53

Adjust-Cost of 256 shs. sold in 1931

16,245.80

Balance-Cost of 1011 shs.

\$44,120.30

Lot #2 - 268 Shares

1924 & 1925-Purchased 4,010 shs. Maxwell "A"

\$297,760.87

July 1925 - Exchanged above stock for

4,010 shs. Chrysler Pfd. (Mkt. value (160)
401 " " Com. (117)

\$601,000.00

\$48,917.00

Total

\$649,917.00

New Cost assigned to 401 shs. Chrysler Common

48,917
\$297,760.87 X 297,760.87

31,191.03

Dec. 1925-Exchanged above stock for 1,604 shs. New Chrysler Common stock

July 20, 1926 - Received rights to subscribe to new stock on basis of one new share for six old shares.

Market Values

1,604 shs. Chrysler Corp. (74)
1,604 Rights (22.75)

\$117,696.00

4,411.00

\$123,107.00

Total

Cost assigned to Rights

4,411.00
\$123,107.00 X 31,191.03

1,117.60

Purchase of 2 Rights - \$2.75

11.00

Subscription to 268 shs. New Stock - \$52.50

16,410.00

Cost of 268 shs.

\$16,528.60

Forward

\$0,676.93

(2)

THE ELECTRIC AUTO-LITE COMPANY

Oct. 10, 1930 - Bought	500 shs.	\$ 15,575.00	
Dec. 29, 1932 - Sold	500 "	2,940.00	
		Loss	\$ 10,615.00

F. J. JOHNSON CO. OF KANSAS CITY

Dec. 29, 1932 - Bought	25 shs.	2,251.25	
Jan. 2, 1933 - "	25 "	4,472.00	
Jan. 9, " - "	25 "	2,237.50	
Dec. 1, 1933 - "	12 "	1,200.00	
		10,143.75	
July 29, 1932 - Sold	100 "	3,826.00	
Aug. 23, " - "	12 "	562.12	
		Loss	6,035.63

FIRE TONE FIRE & BURGLAR COMPANY

Aug. 30, 1930			
Sept. 10, " - Bought	100 shs.	17,215.00	
Dec. 2, 1930 - Exchanged for 500 shs.			
	new stock		
Dec. 29, 1932 - Sold	500 "	1,122.32	
		Loss	11,029.00

CAYNOR ELECTRIC COMPANY, INC.

Jan. 2, 1930 - Bought	331 shs.	20,000.00	
Dec. 29, 1932 - Sold	332 "	3,522.44	
		Loss	46,705.56

EMERALD MOTOR CORPORATION

Oct. 28, 1929 - Bought	2,000 shs.	104,250.00	
Dec. 29, 1932 - Sold	2,000 "	24,424.00	
		Loss	79,826.00

INVESTED CORPORATION

Jan. 2, 1930			
to			
Oct. 8, 1930 - Bought	1,562 shs.	32,498.45	
Dec. 29, 1932 - Sold	1,562 "	6,752.56	
		Loss	25,745.89

NATIONAL BAKING COMPANY

Oct. 15, 1929			
to			
Dec. 16, 1930 - Bought	18,324 shs.	27,228.65	
Dec. 29, 1932 - Sold	18,324 "	15,626.02	
		Loss	70,670.58

NATIONAL BAKING COMPANY OF NEW JERSEY

Nov. 1, 1928 - Bought	200 shs.	22,675.00	
Nov. 28, 1928 - Exchanged for 200 shs.			
	new stock		
Dec. 29, 1932 - Sold	200 "	16,228.00	
		Loss	9,047.00

CHRYSLER CORPORATION

Nov. 2, 1928 - Sold	100 shs.		
" 4, " - "	2,000 "	1,279.50	
" 5, " - "	2,000 "	45,005.50	
" 12, " - "	2,000 "	27,715.00	
" 27, " - "	2,000 "	33,742.00	
" 28, " - "	2,000 "	30,742.00	
" 29, " - "	2,400 "	53,421.40	
" 30, " - "	1,100 "	17,458.10	
	12,500 "	204,503.50	
Cost (See schedule D-6)		460,681.95	
		Loss	256,578.45

TOTAL LOSS ON SALE OF SECURITIES

Reduct-Proceeds of sale of 12 shs. General Electric Special	517,091.34
Stock received as stock dividends 1922-1925	125.38
	516,965.96

1932

Catholic Charities of the Archdiocese of New York	\$500.00
Emergency Unemployment Relief Committee	250.00
St. Vincent de Paul Society	100.00
Catholic Boys Brigade	47.00
Catholic Big Brothers	50.00
Catholic Medical Mission Board	10.00
Catholic Boys Club of the Archdiocese of New York	20.00
The Catholic Institute for the Blind	10.00
Yale University	50.00
Big Brother & Big Sister Federation	10.00
Child of the Infant Saviour	25.00

1,065.00

RECEIPT FOR CASH PAID TO THE

NAME OF THE PERSON OR ORGANIZATION TO WHOM PAID

AMOUNT PAID

DATE PAID

BY WHOM PAID

FOR WHAT PURPOSE

RECEIVED BY

SIGNATURE OF RECEIVING PARTY

DATE

AMOUNT

DATE

AMOUNT

DATE

AMOUNT

DATE

AMOUNT

DATE

AMOUNT

DATE

AMOUNT

DATE

1. Total Receipts from business or profession (state kind of business) **VV**

Cost or Gross Sales		Gross Business Expenses	
2. Labor		10. Salaries and wages (do not deduct compensation for your services)	20,000
3. Material and supplies		11. Interest on business indebtedness to others	
4. Merchandise bought for sale		12. Taxes on business and business property	
5. Other costs (describe below or on separate sheet)		13. Large depletion in value of stock of property	
6. Plus inventory at beginning of year		14. Bad debts arising from sales or services	
7. Total (Lines 2 to 6)		15. Depreciation, obsolescence, and depletion in value of stock of property	
8. Less inventory at end of year		16. Rent, repairs, and other expenses (describe below or on separate sheet)	20,125
9. Net Cost or Gross Sales (Line 7 minus Line 8)		17. Total (Lines 10 to 16)	1,160.00
Enter "C" or "G" or "M" on Lines 9 and 10 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.		18. Total Expenses (Line 9 plus Line 17)	1,160.00
		19. Net Profit (Line 1 minus Line 18) (Show as Loss if Loss)	1,160.00

Explanation of deductions claimed on Lines 9 and 10: Telephone & Telegraph Association dues, sundry office supplies.

SCHEDULE D—INCOME FROM RENTS AND ROYALTIES (See Instructions D)

1. Name of Property	2. Amount Received	3. Cost or Basis (See Instructions D)	4. Depreciation (See Instructions D)	5. Name	6. Amount Received	7. Total
2/64th. interest in 22 Tug Boats	34335	12,90075	807			54642

Explanation of deductions claimed in Column 4: Depreciation of 7% on Investment.

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instructions C)

1. Name of Property	2. Date Acquired	3. Amount Received	4. Cost	5. Name of Seller	6. Date of Sale	7. Amount Received	8. Total
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State how property was acquired.

SCHEDULE D—CAPITAL GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instructions D)

1. Name of Property	2. Date Acquired	3. Date Sold	4. Amount Received	5. Cost	6. Name of Buyer	7. Date of Sale	8. Amount Received	9. Total
(SEE SCHEDULE ATTACHED)								

State how property was acquired.

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS ON SECURITIES (See Instructions E)

1. Description of Securities	2. Amount Received	3. Name of Issuer	4. Date of Issue	5. Amount Received	6. Total
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia.					
(b) Securities issued under Federal Reserve Act, or under such Act as amended, Treasury Note, and Treasury Certificate of Indebtedness.					
(c) Liberty 4 1/2% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of U. S. government.					
(d) Liberty 4% and 4 1/2% Bonds and Treasury Bonds.					
(e) Treasury Notes.					

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN LINES 1, 10, 11, 12, AND 13

Item #14-Taxes- Real Estate

New York State Income (1951)

\$2,350.44 Total Tax Deductions
01.27 (See Schedule Attached)

1. Kind of Property	2. Date	3. Amount Received	4. Date	5. Name of Person to Whom Paid	6. Name of Person to Whom Paid	7. Name of Person to Whom Paid	8. Name of Person to Whom Paid

State how property was acquired

SCHEDULE D - CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (Continued)

1. Kind of Property	2. Date	3. Date	4. Amount Received	5. Date	6. Name of Person to Whom Paid	7. Name of Person to Whom Paid	8. Name of Person to Whom Paid

(SEE SCHEDULE ATTACHED)

State how property was acquired

SCHEDULE E - INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS ON WHICH INTEREST IS PAID IN FULL

1. Description of Obligation	2. Amount Received	3. Date	4. Name of Person to Whom Paid	5. Name of Person to Whom Paid	6. Name of Person to Whom Paid	7. Name of Person to Whom Paid
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia						
(b) Securities issued under Federal War Loan Act, or similar act, and bonds issued under Treasury Note, and Treasury Certificate of Indebtedness						
(c) Liberty 3 1/2% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of U. S. government						
(d) Liberty 4% and 4 1/2% Bonds and Treasury Bonds						
(e) Treasury Notes						

SCHEDULE F - EXPLANATION OF DEDUCTIONS CLAIMED IN SCHEDULES A, B, C, D, E, AND F

Item #14-Taxes- Real Estate

New York State Income (1951)	\$7,840.00	From 1951 Schedule A
Auto License Fee	\$1.37	(See Schedule A)
Club dues & subscriptions	100.00	
Duty	\$74.00	
Passage Tickets	24.00	
Gasoline Tax	20.00	
Check Tax	50.00	
	\$7,910.37	

EXPLANATION OF DEDUCTIONS FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property	2. Date	3. Date	4. Amount Received	5. Date	6. Name of Person to Whom Paid	7. Name of Person to Whom Paid	8. Name of Person to Whom Paid

EXPLANATION OF DEDUCTIONS FOR LOSSES IN FULL, PARTIAL, OR CLAIMED IN SCHEDULES A, B, C, D, E, AND F

1. Kind of Property	2. Date	3. Date	4. Amount Received	5. Date	6. Name of Person to Whom Paid	7. Name of Person to Whom Paid	8. Name of Person to Whom Paid

ATTACHMENT

1. Income from Federal Income Tax, etc. (See instructions 1-4)

2. Income from Federal Income Tax, etc. (See instructions 1-4)

3. Income from Federal Income Tax, etc. (See instructions 1-4)

4. Income from Federal Income Tax, etc. (See instructions 1-4)

5. Income from Federal Income Tax, etc. (See instructions 1-4)

6. Income from Federal Income Tax, etc. (See instructions 1-4)

7. Income from Federal Income Tax, etc. (See instructions 1-4)

8. Income from Federal Income Tax, etc. (See instructions 1-4)

9. Income from Federal Income Tax, etc. (See instructions 1-4)

10. Income from Federal Income Tax, etc. (See instructions 1-4)

11. Other Income (See instructions 1-4)

12. **Directors' Fees**

13. **General Motors Corp. - Common Stock**

14. Total Income as shown in 1 to 11

15. **DEDUCTIONS**

16. Interest Paid

17. State and Local Taxes Paid

18. Taxes on Dividends, etc. (See instructions 1-4)

19. State and Local Taxes Paid

20. Charitable Contributions (See instructions 1-4)

21. Other Deductions Not Reported Above (See instructions 1-4)

22. Total Deductions as shown in 16 to 21

23. Taxable Income (Line 14 minus Line 22)

24. Less: Tax Paid for 1934 (See instructions 1-4)

25. The Balance Due (Line 23 minus Line 24)

26. The Refund Due (Line 24 minus Line 23)

27. Total Tax Paid (Line 24 plus Line 26)

28. Total Tax Due (Line 25 plus Line 27)

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100. Total Tax Due (Line 25 plus Line 27)

COMPUTATION OF TAX (See instructions 29)

1. Total Taxable Income as shown in 23

2. Less: Tax Paid for 1934 (See instructions 1-4)

3. Total Tax Due (Line 1 minus Line 2)

4. Total Tax Paid (Line 2 plus Line 3)

5. Total Tax Due (Line 1 minus Line 2)

6. Total Tax Paid (Line 2 plus Line 3)

7. Total Tax Due (Line 1 minus Line 2)

8. Total Tax Paid (Line 2 plus Line 3)

9. Total Tax Due (Line 1 minus Line 2)

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99. Total Tax Due (Line 1 minus Line 2)

100. Total Tax Paid (Line 2 plus Line 3)

AFFIDAVIT

I, the undersigned, do hereby certify that the return, including the accompanying schedule and statement, has been examined by me, and to the best of my knowledge and belief it is true and correct, and made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1933 and the Regulations issued thereunder.

Signature of Taxpayer: *[Signature]*
 Date: *[Date]*
 Signature of Preparer: *[Signature]*
 Date: *[Date]*
 Signature of Officer: *[Signature]*
 Date: *[Date]*

All amounts shown must be marked "Amount" at top of return. Checks and drafts will be accepted only if payable at par.

Plaintiffs' Exhibit 1.

United States



of America

TREASURY DEPARTMENT
WASHINGTON

Ex.
U. S. Dist. Court
S. D. of N. Y.
MAR 23 1938

December 9, 1932.

PURSUANT to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed is a true copy of the income tax return, attached schedules, of John Thomas Smith, 1115 Fifth Avenue, New York, New York, for the year 1932.

file in this Department.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

L. Birgefeld,
Chief Clerk Treasury Department.



27. If you find that the 2,000 shares of General Motors stock, allegedly sold by John Thomas Smith to Mary A. Smith, in December of 1932, had been purchased by Mr. Smith at a cost of \$10.52 or less, then you may find that John Thomas Smith has not proved that he experienced a loss on that transaction, and, consequently, find for the Government on that issue.

28. If you find that John Thomas Smith intentionally misrepresented the cost to him on his income-tax return of the 2,000 shares of General Motors stock, allegedly sold by him in December of 1932 to Mary A. Smith at a cost to him of \$104,000, and you believe that the Government has established the cost of the said 2,000 shares of General Motors stock at approximately \$21,000, then you may properly find that instead of a loss on this transaction, John Thomas Smith, in fact, experienced a gain, and further that the Commissioner's finding of fraud in connection with the income-tax liability of John Thomas Smith for the year 1932 was proper.

In the event that these requests are not given as instructions to the jury, the defendant respectfully requests that an exception be granted to him for each of the requests which are not given.

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PLAINTIFFS' EXHIBIT 1

INCOME TAX RETURN OF JOHN THOMAS SMITH FOR 1932

(PHOTOPRINTS)

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PLAINTIFFS' EXHIBIT 2

TREASURY DEPARTMENT,
Washington, Mar. 11, 1935.

MR. JOHN THOMAS SMITH,
1115 Fifth Avenue, New York, New York.

SIR: You are advised that the determination of your income tax liability for the year 1932, discloses a deficiency of \$52,784.16, tax and penalty as shown in the statement attached.

In accordance with section 272 (a) of the Revenue Act of 1932, as amended by section 501 of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P7. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period

terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully;

GUY T. HELVERING,
Commissioner.

By CHAS. T. RUSSELL,
Deputy Commissioner.

Enclosures:
Statement.
Form 870.

417

STATEMENT

IT: E: Aj.
AAR 22739-90D.

In re: Mr. John Thomas Smith, 1115 Fifth Avenue, New York,
New York

Income Tax Liability—Year, 1932; income tax liability, \$39,596.73; income tax assessed, \$4,407.29; deficiency, \$35,189.44; 50% penalty, \$17,594.72; total tax and penalty, \$52,784.16.

The deficiency shown herein is based upon the report dated October 31, 1934, prepared by Revenue Agent Perry F. Jacobs and transmitted to you under date of December 24, 1934.

Careful consideration has been accorded your protest dated January 3, 1935, in connection with findings of the examining officer, and the information submitted at a conference held in the office of the internal-revenue agent in charge.

Ordinary income reported on return		\$191,909.06
Add:		
1. Contributions		1,063.00
Adjusted ordinary income		\$192,974.06
Capital net loss reported on return	\$516,965.06	
Deduct:		
2. Loss on stock	276,659.11	
Adjusted capital net loss		240,306.85
Adjusted net loss		\$47,332.77

Computation of Tax

418	Total net loss adjusted		\$47,332.77
	Plus:		
	Capital net loss included		240,306.85
	Ordinary net income adjusted		\$192,974.06
	Less:		
	Dividends	\$162,001.74	
	Personal exemption	2,500.00	164,501.74
	Net income subject to normal tax		\$28,472.34
	Normal tax at 4% on \$4,000.00		\$160.00
	Normal tax at 8% on \$24,472.34		1,957.79
	Surtax on \$102,974.06		67,517.30
	Total		69,635.09

Computation of Tax—Continued

Less:		
12½% of capital net loss	-----	\$240,306.85 30,038.36
Balance	-----	\$39,596.73
Tax liability	-----	\$39,596.73
Tax previously assessed	-----	4,407.20
Deficiency	-----	\$35,189.44
50% penalty provided by section 293 (b), Revenue Act of 1932	-----	\$17,594.72

Explanation of Adjustments

1. Contributions of \$1,065.00 deducted on your return have been disallowed since the capital net loss is in excess of the ordinary net income. Your attention is called to G. C. M. 14030 published in Internal Revenue Bulletin XIII, No. 52, December 24, 1934, in which it is held that the base for the 15 per cent. limitation on the deduction for contributions is gross income less all permissible deductions except contributions, regardless of whether the tax is computed under the capital net gain or capital net loss provisions of the Revenue Act of 1932 and the corresponding provisions of prior Revenue Acts.

2. The capital net loss of \$516,965.96 reported on your return has been reduced by \$276,659.11 for the following reasons:

The loss on the sale of Chrysler stock has been reduced by \$21,981.88 due to the adjustment for stock rights and the application of the rule of "first in, first out" as provided in Article 58 of Regulations 77, Revenue Act of 1932.

The loss of \$79,866.00 on sale of stock to your wife, Mrs. Mary A. Smith, and the loss of \$174,811.23 on stock sold to the Innisfail Corporation, which is owned entirely by you, have been disallowed for the reason that the transactions are held not to have resulted in a loss, the deduction of which is permitted by Section 23 of the Revenue Act of 1932.

Payment should not be made until a bill is received from the collector of internal revenue for your district and remittance should then be made to him.

PLAINTIFFS' EXHIBIT 10.

CERTIFICATE OF INCORPORATION OF THE INNISFAIL CORPORATION

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the Act of the Legislature of the State of New Jersey, entitled "An act concerning corporations (Revision of 1896)," and the acts amendatory thereof and supplemental thereto, do hereby certify as follows:—

First. The name of the corporation is

INNISFAIL CORPORATION

Second. The location of the principal office in this state is at No. 10 Cedar Avenue, in the Town of Allenhurst, County of Monmouth.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served is John Thomas Smith.

Third. The objects for which this corporation is formed are:

(a) To purchase or otherwise acquire, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of the capital stock of, or any bonds, securities, or evidences of indebtedness created by, any other corporation or corporations of this or any other state or any foreign country, and while owner of such stock or bonds or other property may exercise all the rights, powers, and privileges of ownership, including the right to vote thereon.

428 (b) To purchase, hold, improve, develop, and to convey and exchange such real and personal estate as the purposes of the corporation shall require in the United States of America and in any territory, colony, dependency, or district therein, and in any foreign country or countries, and all other real estate which shall have been bona fide, conveyed or mortgaged to the said corporation by way of security, or in satisfaction of debts, or purchased at sales upon judgment or decree obtained for such debts; and to mortgage any such real or personal estate with its franchise.

(c) To buy, lease, or otherwise acquire, so far as may be permitted by law, the whole or any part of the business, good-will, and assets of any person, firm, association, or corporation (either foreign or domestic) engaged in a business, of the same general character as that for which this corporation is organized.

(d) To purchase, hold, sell, and reissue the shares of its own capital stock.

(e) To endorse, guarantee, and secure the payment and satisfaction of bonds, coupons, mortgages, deeds of trust, debentures, securities, obligations, and evidences of indebtedness, and also to guarantee and secure the payment or satisfaction of interest on obligations and of dividends on shares of the capital stock of other corporations; also to assume the whole or any part of the liabilities, existing or prospective, of any person, corporation, firm, or association; and to aid in any manner any other person or corporation with which it has business dealings, or whose stocks, bonds, or other obligations are held or are in any manner guaranteed by the corporation; and to do any other acts and things for the preservation, protection, and enhancement of the value of such stocks, bonds, or other obligations.

429 (f) To borrow or raise moneys for any of the purposes of the corporation, issue bonds, debentures, notes, or other obligations of any nature, or in any manner, for moneys so borrowed, and to secure the payment thereof and of the interest thereon by mortgage upon, or pledge, or conveyance or assignment in trust of the whole or any part of the property of the corporation, real and

personal, including contract rights, whether, at the time owned or, thereafter acquired; and to sell or pledge such bonds or other obligations of the corporation for its corporate purposes.

(g) To apply for, obtain, purchase, or otherwise acquire, to hold, use, and operate, and to sell, lease, assign, mortgage, pledge, or otherwise dispose of any trade names, trade-marks, inventions, formulae, improvements, processes of any nature whatsoever, copyrights and letters patent of the United States and of foreign countries, and to accept, grant, and exercise licenses thereunder.

(h) To conduct its business, have one or more offices, and hold, purchase, mortgage, and convey real and personal property outside of this state in any of the several states, territories, possessions, and dependencies of the United States, the District of Columbia, and in foreign countries.

(i) To carry on any other business in connection with the foregoing, whether manufacturing or otherwise.

(j) To do all and everything necessary, suitable, convenient, or proper for, or in connection with, or incidental to, the accomplishment of any of the purposes, or attainment of any one or more of the objects herein enumerated, or designed directly or indirectly to promote the interest of the corporation, or to enhance the value of any of its properties, and to have and enjoy and exercise all the rights, powers, and privileges which are now or which may hereafter be conferred by the laws of New Jersey upon corporations formed under the Act hereinabove referred to.

430 Fourth. The total authorized capital stock of this corporation is Ten thousand Dollars (\$10,000), divided into One hundred (100) shares of the par value of One hundred Dollars (\$100) each.

The amount of capital stock with which the corporation will commence business is One thousand Dollars (\$1,000).

Fifth. The names and post-office address of the incorporators, and the number of shares subscribed for by each, the aggregate of which (\$1,000) is the amount of the capital stock with which this corporation will commence business, are as follows:

Names and post-office addresses	Number of shares
Charles R. Carroll, Nyack, New York	4
Frank A. Gaynor, Rye, New York	4
Anthony J. Russo, Brooklyn, New York	2

Sixth. The period of existence of this corporation is unlimited.

Seventh. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatsoever.

Eighth. The number of directors of the corporation, not less than three, shall be fixed from the time to time by the bylaws, and the number may be altered as therein provided. In the event of any decrease in the number of directors, additional directors shall be elected as provided by the bylaws by the directors or by the stockholders at an annual or special meeting. In case of any vacancy in the Board of Directors, the remaining directors, by affirmative vote

of a majority thereof, may elect a successor to hold office for the unexpired portion of the term of the director whose place is vacant, and until his successor shall be duly elected and qualified.

431 In furtherance, and not in limitation, of the powers conferred by law, the Board of Directors is expressly authorized:

(a) To make, alter, amend, and repeal the bylaws of the corporation; but any bylaws made by the Board of Directors may be altered or repealed by the stockholders at any annual or special meeting called as provided in the bylaws.

(b) To remove at any time any officer elected or appointed by the Board of Directors, but only by affirmative vote of a majority of the whole Board of Directors. Any other officer or employee of the corporation may be removed at any time by a vote of the Board of Directors, or by any committee or superior officer upon whom such power of removal may be conferred by the bylaws or by vote of the Board of Directors.

(c) From time to time to fix and vary the sum to be reserved over and above its capital stock paid in before declaring any dividends; to direct and to determine the use and disposition of any surplus or profits over and above the capital stock paid in; to fix the time of declaring and paying the dividend and, unless otherwise provided in the certificate and bylaws, to determine the amount of any dividend.

(d) From time to time to determine whether and to what extent, and at what time and places and under what conditions and regulations, the accounts and books of the corporation (other than the stock ledger), or any of them, shall be opened to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the corporation except as conferred by statute or authorized by the Board of Directors or by a resolution of the stockholders.

432 (e) With the written assent of the holders of two-thirds of its issued and outstanding stock, without a meeting, or pursuant to the affirmative vote, in person or by proxy, of the holders of two-thirds of its issued and outstanding stock, at any meeting either annual or special, called as provided in the bylaws, the Board of Directors may sell, convey, assign, transfer or otherwise dispose of any part or all of the property, assets, rights and privileges of the corporation as an entirety, for the stock, bonds, obligations, or other securities of another corporation of this or of any other State, Territory, Colony, or foreign country, or for cash, or partly cash, credit or property or for such other consideration as the Board of Directors, in their absolute and uncontrolled discretion may determine.

(f) The corporation may, by its bylaws, confer upon the directors powers and authorities additional to the foregoing and to those expressly conferred upon them by statute.

Ninth. The stockholders and directors of the corporation may hold their meetings, and have an office and keep the books of the corporation (except the stock and transfer books), and the corporation may have

an office or address, in such place or places outside of the State of New Jersey as the bylaws may provide.

Tenth. The powers and purposes specified in the clauses in this certificate of incorporation shall, except when otherwise expressed in said certificate, be in nowise limited or restricted by reference to or in reference from the terms of any clause of this or any other article in this certificate, but the purposes and powers specified in each of the clauses of this certificate shall be regarded as independent purposes and powers, and the specifications herein contained of particular powers of the corporation are not intended to be and are not in limitation but in furtherance of the powers granted to corporations under said Corporation Law, under and in pursuance of the provisions of which this corporation is formed.

Eleventh. The corporation reserves the right to alter, amend, change, or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon the stockholders herein are granted subject to this reservation.

In witness whereof, we have hereunto set our hands and seals the 10th day of June A. D. 1926.

CHARLES R. CARROLL. (L. S.)

FRANK A. GAYNOR. (L. S.)

ANTHONY J. RUSSO. (L. S.)

Signed, sealed, and delivered in the presence of:

FRANCIS W. HOPKINS.

STATE OF NEW YORK,

County of New York, ss:

Be it remembered, that on this 10th day of June A. D. 1926, before me a Notary Public, personally appeared Charles R. Carroll, Frank A. Gaynor, and Anthony J. Russo, who I am satisfied are the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed, and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

(Sgd.) C. V. KLEPACKI. (L. S.)

Notary Public, Kings County.

Kings Co. Register's No. 7193. Clerk's No. 508; Certificate filed in New York County. Clerk's No. 431, Register's No. 7334. Commission Expires March 30th, 1927.

No. 62702—Series B

STATE OF NEW YORK,

County of New York, ss:

I, William T. Collins, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said County, do hereby cer-

tify, That said Court is a Court of Record, having by law a seal; that C. V. Klepacki whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed instrument was at the time of faking the same a Notary Public acting in and for said county, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's Office of the County of New York a certified copy of his appointment and qualification as Notary Public for the County of Kings with his autograph signature; that as such Notary Public, he was duly authorized by the laws of the State of New York to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this state; and further, that I am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 10 day of June 1926.

[L. S.]

WILLIAM T. COLLINS, *Clerk.*

435

[Endorsed:]

"Received and recorded in the Monmouth County Clerk's Office Jun 11, 1926, at 11 o'clock A. M. in Book N of Incorporations. Page 20 &c.

"JOSEPH McDERMOTT, *Clerk.*

"Filed and Recorded Jun 11, 1926, Thomas F. Martin, Secretary of State."

STATE OF NEW JERSEY

(Emblem)

Department of State

I, the Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a true copy of the Certificate of Incorporation of Innisfail Corporation, and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the Eleventh day of June A. D. 1926, and now remaining on file and of record therein.

In testimony whereof, I have hereunto set my hand and affixed my Official Seal at Trenton, this Thirtieth day of November A. D. 1937.

THOMAS A. MATHEIS.

Secretary of State.

436 PLAINTIFFS' EXHIBIT 11 FOR IDENTIFICATION

JOHN T. SMITH,
1775 BROADWAY,
New York, N. Y., December 29, 1932.

MEMORANDUM OF SALE

I have this day sold to Innisfail Corporation, 15 Exchange Place, Jersey City, N. J., five hundred (500) shares of the common capital stock of The Electro Auto-Lite Company for the sum of \$9,000.00.

JOHN T. SMITH,
INNISFAIL CORPORATION,
H. M. HOGAN, *Sec.*

JOHN T. SMITH,
1775 BROADWAY,
New York, N. Y., December 29, 1932.

MEMORANDUM OF SALE

I have this day sold to Innisfail Corporation, 15 Exchange Place, Jersey City, N. J., five hundred (500) shares of the common capital stock of the Firestone Tire & Rubber Company for the sum of \$6,500.00.

JOHN T. SMITH,
H. M. HOGAN,
Sec. Innisfail Corporation.

JOHN T. SMITH,
1775 BROADWAY,
New York, N. Y., December 29, 1932.

MEMORANDUM OF SALE

I have this day sold to Innisfail Corporation, 15 Exchange Place, Jersey City, N. J., three hundred thirty-two (332) shares of the common capital stock of Gaynor Electric Company, Inc., for the sum of \$3,320.00.

JOHN T. SMITH,
Innisfail Corporation,
H. M. HOGAN, *Sec.*

JOHN T. SMITH,
1775 BROADWAY,
New York, N. Y., December 29, 1932.

MEMORANDUM OF SALE

I have this day sold to Innisfail Corporation, 15 Exchange Place, Jersey City, N. J., Fifteen hundred & fifty-three (1553) shares of the common capital stock of Investrad Corporation for the sum of \$6,879.80.

JOHN T. SMITH,
Innisfail Corporation.
H. M. HOGAN, Sec.

438

JOHN T. SMITH,
1775 BROADWAY,
New York, N. Y., December 29, 1932.

MEMORANDUM OF SALE

I have this day sold to Innisfail Corporation, 15 Exchange Place, Jersey City, N. J., eighteen thousand three hundred twenty-four (18,324) shares of the common capital stock of the National Baking Company for the sum of \$18,324.00.

JOHN T. SMITH,
Innisfail Corporation.
H. M. HOGAN, Sec.

JOHN T. SMITH,
1775 BROADWAY,
New York, N. Y., December 29, 1932.

MEMORANDUM OF SALE

I have this day sold to Innisfail Corporation, 15 Exchange Place, Jersey City, N. J., Eight hundred (800) shares of the common capital stock of the National Sugar Refining Company for the sum of \$16,900.00.

JOHN T. SMITH,
Innisfail Corporation.
H. M. HOGAN, Sec.

439

PLAINTIFFS' EXHIBIT 12

Five Stock Certificates of Electric Auto Lite Company bearing numbers NC20565 through NC20569.

(The one certificate printed below is identical with all of the above except as to the certificate number. The balance is omitted pursuant to stipulation.)

(PHOTOPRINTS)



COMMON SHARES

NUMBER

20569

100,000 PREFERRED SHARES
PAR VALUE \$ 100 EACH

COMMON SHARES

SHARES
100

1,000,000 COMMON SHARES
WITHOUT PAR VALUE

INCORPORATED UNDER THE LAWS OF THE STATE OF OHIO

The Electric Auto-Lite Company

THIS CERTIFICATE IS TRANSFERABLE IN THE CITY OF NEW YORK OR TOLEDO, OHIO

This Certifies that

-JOHN T. SMITH-

is the owner of

ONE HUNDRED

FULL PAID AND NON ASSESSABLE COMMON SHARES WITHOUT PAR VALUE OF

The Electric Auto-Lite Company transferable in the books of the Corporation by the holder hereof in person or by duly authorized attorney upon surrender of this certificate properly endorsed. The designations, preferences, voting powers, redemption rights, and other relative rights, restrictions, and qualifications of the Preferred, Shares and Common, Shares of the Company are set forth in the reverse hereof. This certificate is not valid until countersigned by the Transfer Agent and registered by the Registrar. Witness the seal of the Company and the signatures of its duly authorized officers.

Dated

M. D. Kelly
SECRETARY

D. H. Kelly
V. P. PRESIDENT

AUTHORIZED OFFICERS

REGISTERED
THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, NEW YORK.

THE DESIGNATIONS, PREFERENCES, VOTING POWERS, REDEMPTION RIGHTS, AND OTHER RELATIVE RIGHTS, RESTRICTIONS AND QUALIFICATIONS OF THE PREFERRED SHARES AND COMMON SHARES ARE AS FOLLOWS:

(a) The Preferred Shares shall be entitled to, and there shall be paid to the holders thereof, dividends thereon from and after their date of issue, at the rate of seven per cent. (7%) per annum, payable quarterly-annually, on the first days of January, April, July and October in each year, out of the surplus profits of the corporation, in preference to the holders of Common Shares. Said dividends shall be cumulative, but shall not bear interest. No dividend shall be paid upon the Common Shares while there exists any default in the payment of dividends upon the Preferred Shares. After the payment to the holders of the Preferred Shares of dividends as hereinabove provided, any and all further dividends declared by the Board of Directors of the corporation shall be paid to the holders of Common Shares.

(b) In so far as permitted by law, the holders of Common Shares shall have and possess all voting rights, and the holders of Preferred Shares shall have no voting rights whatsoever, except that whenever, and as often as, the corporation shall be in default for the payment of eight consecutive quarterly dividends to the holders of Preferred Shares, the holders of Preferred Shares shall be entitled to vote for and to elect a majority of the Board of Directors of the corporation and to cast one vote for each share held by them upon all other matters which may be considered by the shareholders. Such voting right shall exist so long as the corporation is in default for the payment of any quarterly dividend, and shall immediately cease in the event the default is cured.

(c) The Preferred Shares may be redeemed in whole or in part at the option of the corporation, as determined by the Board of Directors, on any dividend paying date, by the payment to the holders of the shares so redeemed of One Hundred Ten Dollars (\$110.00) per share, plus all accumulated unpaid dividends thereon. In the event a portion only of said shares is redeemed, the shares to be redeemed may be selected by lot, or otherwise, as determined by the Board of Directors, or may be purchased in the open market for a price, or prices, not in excess of the redemption price, as may

in each case, be determined by the Board of Directors.

Notice of redemption shall be given by registered mail to each holder whose shares are to be redeemed, at least thirty (30) days prior to the date fixed for redemption, at the address as it appears on the records of the corporation. When and as shares are called for redemption, and as notice is given, all rights of the holders of said shares shall cease and except only the right to receive the redemption price thereof, shall cease and terminate. The date fixed for redemption, unless default shall be made in payment of the redemption price upon a tender of the certificates evidencing such shares properly endorsed to that effect. In the event last aforesaid, the holders of said shares shall be restored to and shall have and hold all rights evidenced by said shares held by them, or to such call for redemption, in the manner and in the same extent as if no call for redemption had been made. All shares redeemed, or purchased by the corporation in lieu of redemption as hereinabove provided, shall be canceled and shall not be reissued.

(d) In the event of the voluntary liquidation, or the voluntary dissolution of the corporation, or of the sale of all or substantially all of its assets, the holders of the Preferred Shares shall be entitled to and shall be paid One Hundred Ten Dollars (\$110.00) per share, plus all accumulated unpaid dividends thereon; but shall not be entitled to share further in the proceeds of the liquidation or dissolution of the corporation or in its assets.

In the event of the involuntary liquidation or the involuntary dissolution of the corporation, the holders of the Preferred Shares shall be entitled to and shall be paid the par value of their shares plus all accumulated unpaid dividends thereon; but shall not be entitled to share further in the proceeds of the liquidation or dissolution of the corporation, or in its assets.

After the payment to the holders of the Preferred Shares of the amounts to be paid to them as aforesaid, the remaining proceeds and/or assets shall be distributed and paid to the holders of the Common Shares.

THE AGGREGATE PAR VALUE OF THE PREFERRED SHARES IS \$10,000,000.

For Value received hereby sell, assign and transfer unto

Innisfail Corporation, 15 Exchange Place, Jersey City, N.J.

Shares of the Capital Stock represented by the within Certificate and do hereby irrevocably constitute and appoint

Attorney to transfer the said stock on the Books of the within-named Company, with full power of substitution in the premises.

Dated

In Presence of

Walter D. Dwyer

Thomas B. Dwyer

Signature Guaranteed

Chemical Bank & Trust Company

57th Street at 8th Avenue

Columbus Circle Office

Thomas B. Dwyer
manager



Notice: The Signature in this Assignment must be made in every particular, without addition or subtraction, in any change whatever.

Shares
of the Capital Stock represented by the within Certificate
and do hereby irrevocably constitute and appoint
Attorney
to transfer the said stock on the Books of the within-named
Company, with full power of substitution in the premises.

Dated

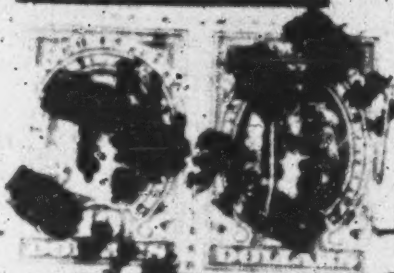
In Presence of

Wiley City

H. V. Smith

Signature Guaranteed
Chemical Bank & Trust Company
57th Street at 8th Avenue
Columbus Circle Office

Thomas C. Fay
Manager



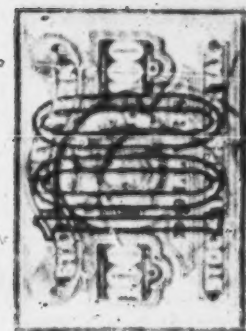
THIS SPACE MUST NOT BE COVERED IN ANY WAY

120000/80

THE DESIGNATION, PREFERENCES, PRIVILEGES AND VOTING POWERS OR REST
 ON OF THE COMMON STOCK AND THE PREFERRED STOCK
 NATIONAL BAKING COMPANY ARE AS FOLLOWS:

stock shall be entitled to receive, surplus or net profits of the
 he rate of seven per cent. (7%)
 quarterly on dates to be fixed
 shall run from the date of the
 from such date as may be fixed
 all be in preference and priority
 as of stock of the Corporation.
 dividends on the Preferred Stock
 ent for the payment of the
 n shall have been a. (vide
 rd of Directors may declare
 ble then or thereafter out
 its
 dissolution, or winding up,
 ders of the Preferred Stock
 the assets, whether capital

not have any voting power whatsoever, except
 of selling, conveying, transferring, or other
 property and assets of the Corporation as a
 as otherwise required by law; provided, how
 In the event that the Corporation shall fail
 on the Preferred Stock when it regularly bec
 to make such payment shall continue for a
 (21) months thereafter during the contin
 payment and until the Corporation shall be
 dividends on the Preferred Stock the holders o
 shall have the exclusive right to elect one
 (less than two) of the total number of director
 The holders of the Common Stock shall h
 on all questions to the exclusion of all other
 as herein otherwise provided.
 No holder of stock of the Corporation of whatever class shall
 have any preferential right of subscription to any shares of any



For Value Received, hereby sell, assign and transfer unto

Innisfail Corporation - To John T. Smith - 1775 Bway - N.Y.C. - 10014 - 98324

John T. Smith - 1775 Bway - N.Y.C. - 10014 - 98324

of the Stock represented by the within Certificate, and I
 hereby irrevocably constitute and appoint **A. B. MAZUR** AND **E. NEWTON**

Attorney
 to transfer the said stock on the books of the within-named
 Company with full power of substitution in the premises.

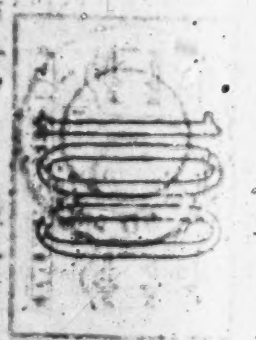
Dated

John T. Smith

In Presence of

William J. Doty

This certificate is not valid unless countersigned by the Secretary of the Corporation.



of the stock represented by the within Certificate, ~~which I~~
hereby irrevocably constitute and appoint ^{A. E. HULL AND EITHER} ~~W. E. NEWTON AND EITHER~~

Attorney
to transfer the said stock on the books of the within-named
Company, with full power of substitution in the premises.

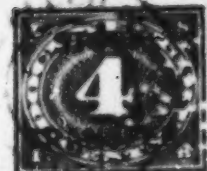
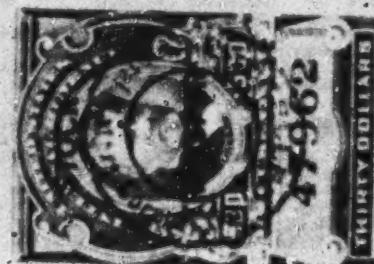
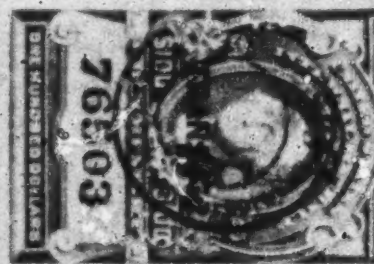
Dated:

Wm. E. Hull

In Presence of

Wm. E. Hull

When upon the face of the Certificate the signature of the transferor is required, it shall be sufficient if it be the signature of the transferor or of any change of holder.



THIS SPACE MUST NOT BE COVERED IN ANY WAY.



INCORPORATED UNDER
THE LAWS OF THE

STATE OF DELAWARE

SHARES

NATIONAL BAKING COMPANY

This is to Certify that

JOHN T. SMITH

is the owner of

NINETEEN THOUSAND NINE HUNDRED THIRTY FOUR**** full-paid and non-assessable shares,
without nominal or par value of the Common Stock of National Baking Company transfer-
able on the books of the Company by the holder hereof in person or by duly authorized attorney, upon the
surrender of this Certificate properly endorsed. A statement of the designations, preferences, privileges and
voting powers or restrictions or qualifications of the Common Stock and of the Preferred Stock of the
Company is printed upon the back hereof and this Certificate and the shares represented hereby are issued
and shall be subject to all the provisions of the Certificate of Incorporation of the Company (copies of which
are on file at the office of the Transfer Agent), to all of which the holder by acceptance hereof assents.
This Certificate is not valid until countersigned by the Transfer Agent and registered by the Registrar.

Witness the signatures of the duly authorized officers of the Company.

Dated DECEMBER 23, 1931.

W. R. Clinton
Assistant Secretary

A. J. Conrad
President

COUNTERSIGNED BY
NATIONAL BAKING COMPANY
TRANSFER AGENT
NEW YORK

REGISTERED
THE NEW YORK TRUST COMPANY
1931

FOR VALUE RECEIVED,..... hereby sell, assign and transfer unto

Investment Corporation to John T. Smith 1775 Broadway N.Y. City
John T. Smith 1775 Broadway N.Y. City

..... Shares
of the Capital Stock represented by the within Certificate, and do hereby
irrevocably constitute and appoint

A. B. HULL Attorney
to transfer the said stock on the Books of the within named Corporation
with full power of substitution in the premises.

Dated 19.....

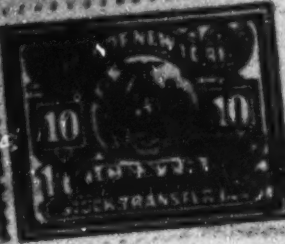
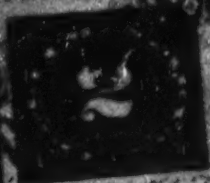
In Presence of

William Doty

J. J. Smith

NOTICE: The signature to this assignment must correspond with the name as written on the face of the Certificate, in every particular, without alteration or enlargement, or change whatever.

DEC



Shares
of the Capital Stock represented by the within Certificate, and do hereby
irrevocably constitute and appoint

A. B. HULL Attorney
to transfer the said stock on the Books of the within named Corporation
with full power of substitution in the premises.

Dated _____ 19____

In Presence of

William Doty

John J. Smith

DEC

60
50
40
30
20
10
0



THIS STAMP NOT BE COVERED IN ANY WAY

16

Number 5407

INCORPORATED UNDER THE LAWS OF THE STATE OF
NEW YORK

Shares
••2109••

Investrad Corporation

Full Paid and Non-Assessable

THIS IS TO CERTIFY that JOHN T. SMITH
is the owner of ••TWENTY ONE HUNDRED NINE••
without par value of INVESTRAD CORPORATION, transferable on the books of the Corporation by the
holder hereof in person or by duly authorized Attorney upon surrender of this Certificate
properly endorsed.

WITNESS the seal of the Corporation and the signatures of its duly authorized
officers affixed DECEMBER 23, 1931



Secretary
Treasurer

Vice-President

For value Received, hereby sell, assign, and transfer unto

_____ Shares
of the Capital Stock represented by the within Certificate,
and do hereby irrevocably constitute and appoint

_____ Attorney
to transfer the said stock on the Books of the within named
Corporation with full power of substitution in the premises
Dated _____ 19____

Witness my hand and seal

NOTICE: The Signature to this assignment must correspond with the name
as written upon the face of the Certificate, in every particular,
without alteration of enlargement or any change whatever.

IRREVOCABLE POWER - 114



Printed by
U. S. GOVERNMENT PRINTING OFFICE
42 Exchange Place, NEW YORK, N. Y.
Stationery and Law Office

Know all these Presents

THAT

For Value Received have bargained, sold, assigned and transferred
presents do bargain, sell, assign and transfer unto *Principal Corporation*
the (1) share
of the *Common Capital Stock* of the *Gaynor Electric Company*

standing in my name on the books of the said

And do hereby constitute and appoint *Joseph J. Jagers*

my true and lawful attorney, IRREVOCABLY, for me and in my name and
stead but to use, to sell, assign, transfer and make over, all or any part of the said
and for that purpose to make and execute all necessary acts of assignment and transfer thereof, and to
substitute one or more persons with like power, hereby ratifying and confirming all that said Attorney,
or substitute or substitutes shall lawfully do by virtue hereof

In witness whereof, I have hereunto set my hand and seal at
New York the *Twenty ninth* day of *December* 19 *32*
Signed, Sealed and Delivered in the presence of

Witness City

Henry M. Jagers





FULL PAID AND NON-ASSESSABLE

CAPITAL STOCK, \$100,000
Shares, \$100 Each



Gaynor Electric Company, Incorporated

INCORPORATED UNDER THE LAWS OF THE STATE OF CONNECTICUT

This is to certify that Henry M. Logan is the owner of One Shares of the Capital Stock of Gaynor Electric Company, Incorporated transferable on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

Witness the Seal of the Corporation and the signatures of its duly authorized Officers affixed this 30 day of October 1929



[Signature]
Secretary

[Signature]
President

Know all Men by these Presents

THAT

John O. Smith

For Value Received have bargained, sold, assigned and transferred and by these presents

do bargain, sell, assign and transfer unto

166 shares

of the *Capital Stock*

Trust Company of Chicago, Inc.

of the *Japan Electric Company, Inc.*

standing in *my* name

on the books of the said

And

do hereby constitute and appoint

Joseph L. Jeger

my true and lawful Attorney, IRREVOCABLY, for *me* and in *my* name and along

but to

use, to sell, assign, transfer and make over, all or any part of the said

and for that

purpose to make and execute all necessary acts of assignment and transfer thereof, and to substitute one

or more persons with like power, hereby ratifying and confirming all this said Attorney

or

substitute or substitutes shall lawfully do by virtue hereof.

In Witness Whereof,

have hereunto set *my* hand and seal at

New York City

the

29

day of

December

193*2*

Signed, Sealed and Delivered in the presence of

Witness

Quarantee

For value Received, herby sell assign and transfer unto

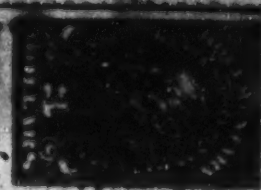
INNIS FAIR CORPORATION - 15 Exchange Place
JERSEY CITY, N.J.

one hundred - sixty - six Shares
of the Capital Stock represented by the within Certificate,
and do hereby irrevocably constitute and appoint

Att. by
to transfer the said stock on the Books of the within named
Corporation with full power of substitution in the premises
Dated 19

Given

NOTICE: The Signature to this assignment must correspond with the name
as written on the face of the Certificate in every part
without a change of name or signature.





FULL PAID AND NON-ASSESSABLE

CAPITAL STOCK, \$100,000

Shares, \$100 Each



Gaynor Electric Company, Incorporated

INCORPORATED UNDER THE LAWS OF THE STATE OF CONNECTICUT

This is to certify that John O. Garabed is the owner of One Hundred & Sixty Six Shares of the Capital Stock of Gaynor Electric Company, Incorporated transferable on the books of the Corporation by the holder thereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

Witness the Seal of the Corporation and the signatures of its duly authorized Officers affixed this 2nd day of January 1930



[Signature]
Secretary

[Signature]
President

For value received, hereby sell, assign and transfer unto

Innifail Corporation, 15 Exchange Place, Jersey City, N.J.

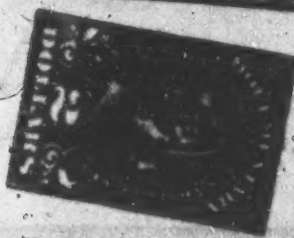
of the stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

to transfer the said stock on the books of the within-named Company with full power of substitution in the premises.

In presence of William D. [illegible]

Signature Guaranteed
Chemical Bank & Trust Company
67th Street at 8th Avenue
Columbus Circle Office

Thomas L. Fry
Manager



THIS SPACE MUST NOT BE COVERED IN ANY WAY

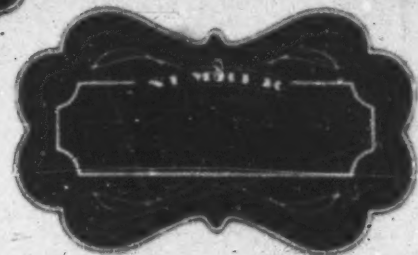
NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OF ARRANGEMENT OR ANY CHANGE WHATSOEVER.

100
SHARES

INCORPORATED UNDER THE

LAWS OF THE STATE OF OHIO

100
SHARES



Firestone

100

THE FIRESTONE TIRE AND RUBBER COMPANY

THIS CERTIFICATE IS TRANSFERABLE IN THE CITY OF NEW YORK OR IN ANY OTHER CITY

This Certifies that **JOHN T SMITH** ★★

is the owner of **ONE HUNDRED** full-paid and non-assessable shares of the **Par Value of \$10. Each of the Common Stock** of the **Firestone Tire and Rubber Company**, transferable in person or by duly authorized attorney upon surrender of this certificate properly indorsed. The respective laws and provisions of the several classes of stock of the Company are set forth in full in the Statutes on the reverse of this Certificate, and the holder hereof by accepting this certificate assents to and is bound by all the laws and provisions set forth in the said Statutes. This Certificate is not valid until countersigned by the Transfer Agent and registered by the Registrar. Witness, the fac-simile seal of the Company and the fac-simile signatures of its duly authorized officers.

APR 22 1930
THE NATIONAL CITY BANK OF NEW YORK
(NEW YORK)
REGISTERED

REGISTERED
CITY BANK & TRUST COMPANY
(NEW YORK)
TRANSFER AGENT
AUTHORIZED OFFICER

W. Robinson
ASSISTANT SECRETARY



Harvey S. Firestone, Jr.
VICE PRESIDENT

440

PLAINTIFFS' EXHIBIT 13

Five stock certificates of Firestone Tire & Rubber Company bearing numbers NYC1126 through NYC1130.

(The one certificate printed below is identical with all of the above, except as to the certificate number. The balance is omitted pursuant to stipulation.)

(PHOTOPRINTS)

[For the Convenience of Court and Counsel this Exhibit (Photostatic Copies) is bound in on the Opposite Page.]

442

PLAINTIFFS' EXHIBIT 14

Two certificates of Gaynor Electric Company, Inc., Nos. 4 and 6 with stock power attached.

(The one certificate and stock power printed below is identical with all of the above, except as to the certificate number. The balance is omitted pursuant to stipulation.)

(PHOTOPRINTS)

[For the Convenience of Court and Counsel this Exhibit (Photostatic Copies) is Bound in on the Opposite Page.]

444

PLAINTIFFS' EXHIBIT 15

Certificate No. 5 of Gaynor Electric Company, Inc., with stock power attached.

(PHOTOPRINTS)

[For the Convenience of Court and Counsel this Exhibit (Photostatic Copies) is bound in on the Opposite Page.]

446

PLAINTIFFS' EXHIBIT 16

Certificate No. 5407 of Investrad Corporation for 2,109 shares.

(PHOTOPRINTS)

[For the Convenience of Court and Counsel this Exhibit (Photostatic Copies) is bound in on the Opposite Page.]

448

PLAINTIFFS' EXHIBIT 17

Certificate No. 55 of the National Baking Company for 19,934 shares.

(PHOTOPRINTS)

[For the Convenience of Court and Counsel this Exhibit (Photostatic Copies) is Bound in on the Opposite Page.]

194

JOSEPH T. HIGGINS VS. JOHN T. SMITH

450

PLAINTIFFS' EXHIBIT 18

Certificate No: T1969 of National Sugar Refining Company for 800 shares.

(PHOTOPRINTS)

[For the Convenience of Court and Counsel this Exhibit (Photostatic Copies) is Bound in on the Opposite Page.]

452

PLAINTIFFS' EXHIBIT 19

No. 7016

New York, December 29, 1932.

CHEMICAL BANK & TRUST COMPANY 1-12

NEW YORK

Pay to the order of Innisfail Corporation (\$7,440.88) the sum of \$7,440 and 88 Cts.

J. T. SMITH.

(On left hand side of check in the margin:) John Thomas Smith, 1775 Broadway, New York, N. Y. (Endorsement on back as follows:) For Deposit (in writing). Innisfail Corporation (in writing). (Rubber stamp of receiving bank.) (Perforation across check illegible.)

453

PLAINTIFFS' EXHIBIT 20

480

INNISFAIL CORPORATION

BY-LAWS

Article I.—Officers

The principal office of the Corporation shall be in the Town of Allenhurst, County of Monmouth, State of New Jersey. The Corporation may also have an office in the City of New York, State of New York, and also offices in such other places as the Board of Directors may from time to time appoint or the business of the Corporation may require.

Article II.—Stockholders

SECTION 1. Annual Meeting.—The annual meeting of the stockholders for the purpose of electing directors and of transacting such other business as may come before it, shall be held at its office #15 Exchange Place, Jersey City, State of New Jersey, or at its office in the City of New York, State of New York, or at such other places

TEMPORARY CERTIFICATE — Exchangeable for Engraved Certificate when ready for delivery.

No. T 1969

--800-- Shares

The National Sugar Refining Company of New Jersey

Incorporated under the Laws of the State of New Jersey

TOTAL AUTHORIZED CAPITAL
600,000 Shares Without Nominal or Par Value

THIS IS TO CERTIFY that

JOHN T. SMITH.....

is the owner of

EIGHT HUNDRED

fully paid and

non-assessable shares without nominal or par value of the Capital Stock of

The National Sugar Refining Company of New Jersey

transferable on the books of the Corporation, by the holder hereof in person, or by attorney, on the surrender of this Certificate duly endorsed.

This Certificate is not valid until countersigned by the Transfer Agent and registered by the Registrar.

WITNESS the signatures of the duly authorized officers of the Corporation.

Dated, 1929

[Signature]

Treasurer

[Signature]

President

By *[Signature]* Transfer Agent

COUNTERSIGNED:
THE NATIONAL SUGAR REFINING COMPANY OF NEW JERSEY

REGISTERED
THE NATIONAL CITY BANK OF NEW YORK
JAN 2 - 1929
By *[Signature]* Authorized Officer

DEC 3 1932

For Value Received, hereby sell, assign and transfer

unto

Innisfail Corporation, 15 Exchange Place,
Jersey City, N.J.

Shares

of the Capital Stock represented by the within Certificate, and do hereby
irrevocably constitute and appoint

Attorney

to transfer the said stock on the books of the within named Corporation,
with full power of substitution in the premises.

Dated 19

John V. Frick

In presence of:

NOTICE: The signature to this assignment must correspond with the name as written of the Certificate, in every particular, without variation or enlargement, or any

signature must correspond with the name as written upon the face of the certificate, or any change thereon.

Shares
of the Capital Stock represented by the within Certificate, and do hereby
irrevocably constitute and appoint

Attorney
to transfer the said stock on the books of the within named Corporation,
with full power of substitution in the premises.

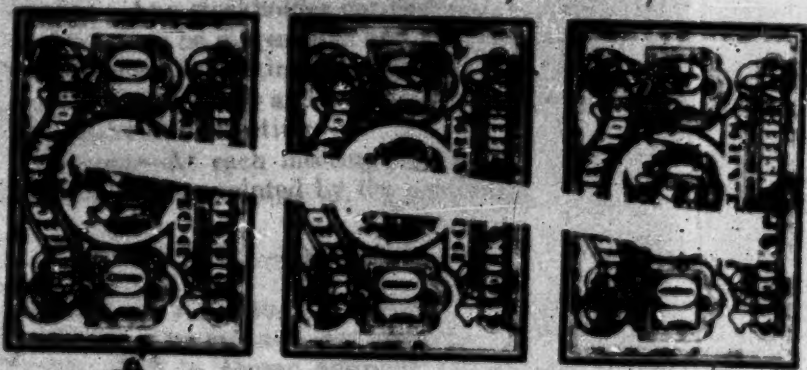
Dated 19

John V. Smith

In presence of:

William D. By

Thomas L. By
Manager



as the Secretary may, at the request of the President, designate, at 12 o'clock noon on the third Wednesday in April in each year, or if said day be a legal holiday, then on the next succeeding day not a holiday.

SECTION 2. Special Meetings.—Special meetings of the stockholders shall be called by the Secretary upon written request of the President or of a majority of the directors. No business other than that specified in the call therefor shall be considered at any special meeting.

SECTION 3. Notice.—Notice of the annual meeting shall, at least ten days prior to the date thereof, be mailed to each stockholder at his last known post office address as the same appears on the records of the Corporation.

Notice of a special meeting stating the purpose thereof shall be mailed at least ten days prior to the date thereof to each stockholder of record at his last known post office address as the same appears upon the records of the Corporation.

SECTION 4.—Quorum.—A majority in amount of the stock entitled to vote, issued and outstanding represented by the holders of record, hereof in person or by proxy shall be requisite to constitute a quorum at any meeting of stockholders; but less than such majority may adjourn the meeting from time to time, and at any such adjourned meeting any business may be transacted which might have been transacted if the meeting had been held as originally called.

SECTION 5. Proxies.—Any stockholder entitled to a vote at a meeting of the stockholders may be represented and vote thereat by proxy, appointed by an instrument in writing subscribed by such stockholder or by his duly authorized attorney and submitted to the Secretary of the meeting at or before such meeting.

SECTION 6. Inspectors.—At each meeting of the stockholders, inspectors of election may be appointed by the presiding officer of the meeting.

Article III.—Directors

SECTION 1. Number and Election.—The business and property of the Corporation shall be managed and controlled by a Board of three Directors who shall be chosen annually by the stockholders, and shall hold office until the annual meeting of the stockholders succeeding their appointment and election and thereafter until their respective successors shall have been duly elected and qualify.

The number of Directors may be altered from time to time by the alteration of these by-laws.

The number of Directors may at any time be increased by vote of the Board of Directors, and, in case of any such increase, the Board of Directors shall have power to elect such additional Directors to hold office until the next meeting of stockholders, and until their successors are elected and qualify.

SECTION 2. Vacancies.—In case of any vacancy in the Board of Directors through death, resignation, disqualification or other cause,

the remaining Directors by an affirmative vote of a majority thereof may elect a successor to hold office for the unexpired portion of the term and until the election of his successor.

SECTION 3. Regular Meetings.—A regular meeting of the Board of Directors shall be held immediately following the annual meeting of the stockholders and at the same place, unless the Board of Directors shall appoint a different hour or place. No notice of the holding of such meeting shall be required, unless the meeting shall be held at a different hour or place than that hereinbefore mentioned.

SECTION 4. Special Meetings.—Special meetings of the Board of Directors shall be held whenever called by the direction of the President, or by a majority of the Directors for the time being in office.

SECTION 5. Notice of Meetings.—The Secretary shall give notice of the time and place of holding each meeting, except the regular 483 meeting, immediately following the annual meeting of the stockholders, by mailing such notice at least two days before the meeting or by telegraphing the same at least one day before the meeting to each Director; provided, however, that notice thereof may be waived in writing by the Directors. It shall not be necessary to state in such notice the object of the meeting.

SECTION 6. Place of Meeting.—The Board of Directors may hold its meetings, have an office and keep the books of the Corporation (except as otherwise provided by law) outside of the State of New Jersey, in the City of New York, New York, or at such other places as from time to time they may determine.

SECTION 7. Quorum.—A majority of the Board of Directors shall constitute a quorum for the transaction of business, but if at any meeting of the Board there be less than a quorum present, a majority of those present may adjourn the meeting from time to time.

SECTION 8. Powers.—All the powers of the Corporation are vested in and shall be exercised by the Board of Directors except as otherwise prescribed by statute.

SECTION 9. Order of Business.—At meetings of the Board of Directors business shall be transacted in such order as from time to time the Board may determine by resolution.

Article IV.—Officers

SECTION 1. Election.—At the first meeting of the Board of Directors (at which a quorum shall be present) held next after the annual meeting of the stockholders, the Board of Directors shall elect officers of the Corporation, and appoint such subordinate officers and employees as it shall determine.

484 **SECTION 2. Number and Term of Office.**—The officers of the Corporation shall be a President, one or more Vice Presidents, a Treasurer and a Secretary, who shall be elected as hereinabove provided to serve for one year and until their respective successors are elected and qualified. Additional Vice Presidents may be elected from time to time as determined by the Board of Directors which

may also appoint one or more Assistant Secretaries, one or more Assistant Treasurers, a General Manager and such subordinate officers and agents of the Corporation as it may from time to time determine. The same person may hold the offices of President and General Manager, or of Vice President and General Manager, or of Treasurer and of Secretary, or Assistant Secretary, or of Secretary and Assistant Treasurer, or of Assistant Secretary and Assistant Treasurer.

SECTION 3. President.—The President shall preside at all meetings of the stockholders, unless the stockholders shall appoint a Chairman (who may be the President), and the President shall also preside at all meetings of the Board of Directors. He shall exercise, subject to the control of the Board of Directors, a general supervision over the affairs of the Corporation, and shall perform such other duties as may be assigned to him from time to time by the Board.

SECTION 4. Vice President.—The Vice President or Vice Presidents shall perform the duties of the President in his absence or during his inability to act. Any action taken by a Vice President in the performance of the duties of the President shall be conclusive evidence of the absence or inability to act of the President at the time such action was taken. The Vice Presidents shall also have such other and further powers and shall perform such other and further duties as may be assigned to them respectively by the Board of Directors.

485 Upon any vacancy in the office of the President caused by death or incapacity for any reason deemed sufficient by the Board, the Vice Presidents in the order of their seniority shall succeed to the office of President, unless otherwise ordered by the board.

SECTION 5. Treasurer.—The Treasurer shall have the custody of the funds and securities of the Corporation which may come into his hands. When necessary or proper, he may endorse, on behalf of the Corporation, for collection, checks, notes, and other obligations. He shall deposit the funds of the Corporation to its credit in such banks and depositaries as the Board of Directors may from time to time designate. He shall submit to the annual meeting of stockholders a statement of the financial condition of the Corporation, and whenever thereunto required by the Board of Directors, shall make and render a statement of his accounts and such other statements as may be required. He shall keep in books of the Corporation full and accurate account of all moneys received and paid by him for account of the Corporation. He shall perform such other duties as may be from time to time assigned to him by the Board of Directors.

SECTION 6. Secretary.—The Secretary shall keep the minutes of all meetings of the Board of Directors, and of the stockholders, unless another person be appointed for that purpose by the stockholders. He shall give or cause to be given all notices required by these by-laws or by resolution of the Board of Directors. He shall

have charge of the stock certificate book, stock transfer books, and stock ledgers, all of which shall at all reasonable hours be open to the examination of any Director; he shall have custody of the seal of the Corporation; and he shall in general perform all the duties usually incident to the office of Secretary, subject to the control of the Board of Directors.

486 **SECTION 7. Assistant Officers.**—The Assistant Secretary or Secretaries and the Assistant Treasurer or Treasurers shall perform the duties of the Secretary and of the Treasurer, respectively, in the absence of those officers, and shall have such further powers and perform such other duties as may be assigned to them respectively by the Board of Directors.

SECTION 8. Removal.—Any officers or any employee elected or appointed by the Board of Directors, or any other officers or employee, may be removed (except from the office of Director) at any time with or without cause, by a vote of a majority of the whole Board of Directors at any regular meeting or at a special meeting of the Board called for that purpose.

Article V.—Stock

SECTION 1. Certificates.—Certificates evidencing the ownership of shares of stock of the Corporation shall be issued to those entitled to them by transfer and otherwise. Each stock certificate shall bear a distinguishing number, the signature of the President or Vice President and of the Secretary or an Assistant Secretary or of the Treasurer or an Assistant Treasurer, the seal of the Corporation, and such recitals as may be required by law; they shall be issued in numerical order and shall be of such tenor and design as the Board of Directors may adopt, and a full record of the issue of each such certificate shall be made in the books usually kept for that purpose or required by law. The tenor and design thereof may be changed from time to time by the Board.

487 **SECTION 2. Transfers.**—The shares of stock may be transferred on the proper books of the Corporation by the registered holders thereof or by their attorneys legally constituted or their legal representatives by surrender of the certificates therefor for cancellation and a written assignment of the shares evidenced thereby.

SECTION 3. Lost Certificates.—The Board of Directors may order a new certificate or certificates of stock to be issued in place of any certificate or certificates alleged to have been lost or destroyed, but in every such case the owner of the lost or destroyed certificate or certificates shall first cause to be given to the Corporation a bond, with surety or sureties satisfactory to the Corporation, in such sum as the Board may in its discretion deem sufficient, as indemnity against any loss or liability that the Corporation may incur by reason of the issue of such new certificates; but the Board of Directors may in its discretion refuse to issue such new certificates save upon the order of some court having jurisdiction in such matters.

Article VI

The Board of Directors may fix in advance a date, not exceeding thirty (30) days preceding the date for the payment of any dividend, as a record date for the determination of the stockholders entitled to receive payment of any such dividend.

Article VII.—Signatures

SECTION 1. Negotiable Instruments.—All checks, drafts, notes or other obligations of the Corporation shall be signed by such of the officers of the Corporation or by such other person or persons as may be thereunto authorized by the Board of Directors.

488 SECTION 2. Stock Transfer.—All endorsements, assignments, transfers, stock powers or other instruments of transfer of securities standing in the name of the Corporation shall be executed for and in the name of the Corporation by any two of the following officers, to wit: The President, a Vice President, the Treasurer, and Secretary; or by any one thereof and an Assistant Secretary or an Assistant Treasurer; or by any person or persons thereunto authorized by the Board of Directors.

SECTION 3. Proxies.—The Board of Directors may authorize from time to time the signature and issue of proxies to vote upon shares of stock of other corporations owned by and standing in the name of this Corporation. Unless otherwise directed, all such proxies shall be signed in the name of the Corporation by the President, a Vice President, or by the Secretary or Assistant Secretary.

Article VIII.—Seal

SECTION 1. The seal of the Corporation shall be in the form of a circle, and shall bear the name of the Corporation, the year of its incorporation and the words "Corporate Seal, New Jersey."

Article IX.—Amendments

All by-laws of the Corporation shall be subject to alteration or repeal, and new by-laws may be made, either by the affirmative vote of holders of record of a majority of the outstanding stock of the Corporation entitled to vote, given at an annual meeting or

489 at any special meeting, provided notice of the proposed alteration or repeal of the proposed new by-laws be included in the notice of such meeting, or by the affirmative vote of a majority of the whole Board of Directors. By-laws made or altered by the Board of Directors shall be subject to alteration or repeal by the stockholders or by the Board of Directors.

Article X.—Fiscal Year

The fiscal year of the Corporation shall commence on the first day of January and end on the thirty-first day of December in each year.

Article XI.—Waiver of Notice

Whenever, under the provisions of these by-laws or of any law, the stockholders or directors are authorized to hold any meeting after notice, or after the lapse of any prescribed period of time, such meeting may be held without notice, or without such lapse of time, by the written waiver of such notice signed by every person entitled to notice.

As adopted June 14, 1926.

490

INNISFAIL CORPORATION

WAIVER OF NOTICE OF MEETING OF INCORPORATORS AND SUBSCRIBERS

We, the undersigned, being all the incorporators and all the subscribers to the Certificate of Incorporation of Innisfail Corporation, a corporation organized under the laws of the State of New Jersey, do hereby waive notice of the time, place and purpose of the first meeting of said subscribers and incorporators, and do fix the 14th day of June 1926, at twelve o'clock noon, as the time, and No. 224 West 57th Street, Borough of Manhattan, New York City, State of New York, as the place of holding said meeting, and consent that such business may be transacted thereat as may lawfully come before said meeting.

Dated New York City, New York, June 14th, 1926.

CHARLES R. CARROLL

FRANK A. GAYNOR

ANTHONY J. RUSSO.

INNISFAIL CORPORATION

MINUTES OF FIRST MEETING OF INCORPORATORS AND SUBSCRIBERS

The first meeting of the Corporation was held on the 14th day of June 1926, at 12:00 o'clock noon at No. 224 West 57th Street, Borough of Manhattan, City and State of New York, pursuant to a written waiver of notice signed by all the incorporators fixing said time and place.

Frank A. Gaynor, Esquire, one of the incorporators and subscribers, called the meeting to order.

491 The following incorporators were present in person:

Names	Number of shares
Frank A. Gaynor	4 3 1
Charles R. Carroll	4 3 1
Anthony J. Russo	2 1 1

being all of the incorporators and subscribers to the capital stock and to the Certificate of Incorporation.

Upon motion duly made and seconded Frank A. Gaynor, Esquire, was elected Chairman, and Anthony J. Russo, Esquire, was elected Secretary of the meeting.

The Secretary presented to the meeting and read a waiver of notice of the time and place of holding this meeting, and upon motion duly made and seconded the original waiver of notice was directed to be inserted in the minute book immediately preceding the minutes of this meeting.

The Chairman reported that the Certificate of Incorporation of Innisfail Corporation had been filed and recorded in the offices of the Clerk of the County of Monmouth and of the Secretary of State of New Jersey, on the 11th day of June 1926.

Upon motion duly made and seconded, it was unanimously Resolved, that the Secretary cause a copy of such Certificate of Incorporation to be filed among the records of the Corporation.

The Secretary then presented to the meeting and read a proposed form of By-Laws for Innisfail Corporation.

Upon motion duly made and seconded, it was unanimously

Resolved, that the proposed form of By-Laws for Innisfail Corporation presented and read by the Secretary be, and the same is hereby, adopted as and for the By-Laws of Innisfail Corporation and that a copy thereof be annexed to the minutes of this meeting.

Upon motion duly made and seconded, it was unanimously

Resolved, that John T. Smith, Esquire, be, and he hereby is, appointed the Agent of Innisfail Corporation in charge of its registered office, and upon whom process against this Corporation may be served in accordance with the laws of the State of New Jersey.

Upon motion duly made and seconded, it was ordered that the meeting proceed to the election of a Board of Directors.

The following named persons were nominated for Directors of the Corporation, to hold office until the next annual meeting, or until their successors are duly elected and qualified:

FRANK A. GAYNOR.

CHARLES R. CARROLL.

ANTHONY J. RUSSO.

No other nominations having been made, the polls were duly opened and, ballot having been duly had and the polls having remained open until all of the stock represented at the meeting had been voted, the polls were declared closed and the Chairman declared that the aforesaid gentlemen had been duly elected Directors of the Corporation.

The Secretary presented the following transfers of subscriptions:

From	To	Number of shares
Frank A. Gaynor	John T. Smith	3
Charles R. Carroll	John T. Smith	3
Anthony J. Russo	John T. Smith	1

Upon motion duly made and seconded, it was unanimously

Resolved, that the Board of Directors be, and it hereby is, authorized and empowered to issue shares of the capital stock of this Corporation to the full amount authorized by its Certificate of Incorporation.

ration, in such amounts and proportions as from time to time shall be determined by the Board of Directors and as may be permitted by law, and to accept in full or partial payment therefor, cash or such property as the Board of Directors in its discretion may deem best for the interests of the Corporation.

There being no further business, upon motion the meeting adjourned.

ANTHONY J. RUSSO,
Secretary of the Meeting.

INNISFAIL CORPORATION

TRANSFER OF SUBSCRIPTION

Know all men by these presents, that I, Frank A. Gaynor, in consideration of One Dollar (\$1.00) lawful money of the United States, to me paid before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and for other good and
494 valuable consideration, have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over unto John T. Smith, or to his order, all my right, title, and interest as a subscriber to the capital stock and an incorporator of Innisfail Corporation (a corporation organized under the laws of the State of New Jersey), to the extent of three (3) shares, and I do hereby request and direct the said Corporation to issue the certificate for said three (3) shares to and in his name or in the name of such person, firm, or corporation as he may elect.

In witness whereof, I have hereunto set my hand and seal this 14 day of June 1926.

FRANK A. GAYNOR. [L. S.]

Signed, sealed, and delivered in the presence of Francis W. Hopkins.

(Stock transfer tax paid, 12 cents.)

INNISFAIL CORPORATION

TRANSFER OF SUBSCRIPTION

Know all men by these presents, that I, Charles R. Carroll, in consideration of One Dollar (\$1.00) lawful money of the United States, to me paid before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and for other good and valuable consideration, have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over unto John T. Smith, or to his order, all my right, title, and interest as a subscriber to the capital stock and an incorporator of Innisfail
495 Corporation (a corporation organized under the laws of the State of New Jersey), to the extent of three (3) shares, and I do hereby request and direct the said corporation to issue the certifi-

cate for said three (3) shares to and in his name or in the name of such person, firm, or corporation as he may elect.

In witness whereof, I have hereunto set my hand and seal this 14 day of June 1926.

CHARLES R. CARROLL. [L. S.]

Signed, sealed, and delivered in the presence of Francis W. Hopkins.

(Stock transfer tax paid, 12 cents.)

INNISFAIL CORPORATION

TRANSFER OF SUBSCRIPTION

Know all men by these presents, that I, Anthony J. Russo, in consideration of One Dollar (\$1.00) lawful money of the United States, to me paid before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and for other good and valuable consideration, have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over unto John T. Smith, or to his order, all my right, title, and interest as a subscriber to the capital stock and an incorporator of Innisfail Corporation (a corporation organized under the laws of the State of New Jersey), to the extent of one (1) share, and I do hereby request and direct the said corporation to issue the certificate for said one

496 (1) share to and in his name or in the name of such person, firm, or corporation as he may elect.

In witness whereof, I have hereunto set my hand and seal this 14 day of June 1926.

ANTHONY J. RUSSO. [L. S.]

Signed, sealed, and delivered in the presence of Francis W. Hopkins.

(Stock transfer tax paid, 4 cents.)

INNISFAIL CORPORATION

WAIVER OF NOTICE OF FIRST MEETING OF BOARD OF DIRECTORS

We, the undersigned, being all the directors of Innisfail Corporation, do hereby waive all notice whatsoever of the first meeting of the Board of Directors, and do hereby agree and consent that the same be held at No. 224 West 57th Street, Borough of Manhattan, City and State of New York, on the 14th day of June 1926, at 2:00 o'clock in the afternoon, and that all and any lawful business may be transacted at said meeting as may be deemed advisable by the Directors present thereat.

Dated June 14, 1926.

FRANK A. GAYNOR.
CHARLES R. CARROLL.
ANTHONY J. RUSSO.

INNISFAIL CORPORATION

MINUTES OF FIRST MEETING OF BOARD OF DIRECTORS

The first meeting of the Board of Directors of Innisfail Corporation was held at No. 224 West 57th Street, Borough of Manhattan, City and State of New York, on the 14th day of June 1926, at 2:00 o'clock in the afternoon, pursuant to a written waiver of notice signed by all the directors fixing said time and place.

There were present: Messrs. Frank A. Gaynor, Charles R. Carroll, Anthony J. Russo, being all the members of the Board.

Mr. Gaynor was chosen Chairman of the meeting and Mr. Russo Secretary thereof.

The Secretary presented to the meeting and read a waiver of notice signed by all the Directors.

Upon motion duly made and seconded, the Secretary was instructed to file the original waiver of notice in the minute book immediately preceding the minutes of this meeting.

The Secretary presented the minutes of the first meeting of incorporators and subscribers to the certificate of incorporation held on the 14th day of June 1926, and also the bylaws adopted by said meeting. The said by-laws were read and, upon motion, unanimously ratified, approved and confirmed as and for the By-laws of the Corporation.

Upon motion duly made and seconded, it was unanimously

Resolved, that the seal of this corporation be the impression upon wax or paper of the following words:

498 "Innisfail Corporation, Corporate Seal 1926 N. J.," and that an impression of the same be placed upon the minutes of this meeting.

Upon motion duly made and seconded, the following officers were unanimously elected for the ensuing year: Frank A. Gaynor, President; Anthony J. Russo, Vice President; Henry M. Hogan, Secretary and Treasurer.

Upon motion duly made and seconded, it was unanimously

Resolved, that the office of the Corporation in the City of New York shall be located at No. 224 West 57th Street, in the Borough of Manhattan, City, County, and State of New York, until further ordered by this Board.

Know all men by these presents, that I, John T. Smith, of the City, County, and State of New York, party of the first part, in consideration of the sum of Ten Dollars (\$10) and other valuable considerations to me in hand paid by Innisfail Corporation, a corporation of New Jersey, party of the second part, have sold, assigned, transferred and set over and by these presents do hereby sell, assign, transfer, and set over all my right, title, and interest in and to 5,005 shares of the preferred stock of Chrysler Corporation represented by stock certificates Nos. TP674-697, TP048, TP630-54 and TP045 deposited with Frank Bassett under the terms of an agreement between the first party and said Bassett dated June 20, 1925, together with

the right of the first party to exercise the option granted to him pursuant to the terms of said agreement to exchange the said 5,005 shares of preferred stock of Chrysler Corporation for 26,477 shares of the common stock of said Chrysler Corporation.

199 To have and to hold the said property for its own proper use and behoof forever.

In witness whereof, the first party has caused these presents to be executed this 14th day of June 1926, in the City of New York.

JOHN T. SMITH. [L.S.]

(Stock transfer tax paid \$200.20.)

STATE OF NEW YORK,

County of New York, ss:

On this 14th day of June 1926 before me, the subscriber, personally came John T. Smith, to me known to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

C. V. KLEPACKI,

Notary Public, Kings County.

Kings Co. Register's No. 7193, Clerk's No. 508. Certificate filed in New York County. Clerk's No. 431, Register's No. 7324. Commission Expires March 30th, 1927.

The Secretary then stated that the incorporators and subscribers to the certificate of incorporation had assigned their respective subscriptions to John T. Smith as follows:

Name	Number of shares
Frank A. Gaynor	3
Charles R. Carroll	3
Anthony J. Russo	1

500 The following proposition from John T. Smith was thereupon presented to the meeting:

NEW YORK CITY, June 14th, 1926.

To the BOARD OF DIRECTORS OF INNISFAIR CORPORATION.

DEAR SIR: In consideration of the issuance to me of 97 shares of your capital stock of the par value of \$100 a share, full-paid and non-assessable, I hereby agree to transfer and assign to your Corporation, by good and sufficient instruments of transfer and assignment, the following:

(a) All my right, title, and interest in and under a certain agreement dated June 20, 1925, between Frank Bassett and the undersigned, together with

(b) Five thousand and five (5,005) shares of the Preferred stock of Chrysler Corporation, a corporation of the State of Delaware.

Very truly yours,

JOHN T. SMITH.

After discussion, upon motion duly made, seconded and unanimously carried, it was

Resolved, that the foregoing offer be and the same hereby is accepted, and in the opinion of the Board the property covered by said offer is necessary for the purposes of this corporation and is of a fair and reasonable value in excess of Ten Thousand Dollars (\$10,000.00); and it was further

501 Resolved, that the proper officers of this corporation be and they hereby are, authorized to issue, subject to the order of John T. Smith, Ninety-seven (97) shares of the capital stock, full-paid and non-assessable, of the corporation in accordance with the foregoing, and to do any and all things proper and necessary to effectuate the same.

Upon motion duly made, seconded and unanimously carried, it was Resolved, that Innisfail Corporation open a bank account with The New York Trust Company and/or any of its branches, and deposit the funds of the Corporation therein from time to time, in the Corporation's name, subject to withdrawal upon the signatures of any two of the following:

FRANK A. GAYNOR.
HENRY M. HOGAN.
ANTHONY J. RUSSO.

The Secretary presented for approval a form of certificate for the capital stock of the Corporation, and upon motion duly made and seconded, it was unanimously

Resolved, that the stock certificate representing the capital stock of this Corporation as presented at this meeting be adopted and that the Secretary annex a copy of said form to these minutes.

There being no further business, the meeting adjourned.

ANTHONY J. RUSSO,
Secretary of the Meeting.

Incorporated Under Laws of the State of New Jersey. Number _____ Shares.

502

INNISFAIL CORPORATION

Capital Stock, \$10,000. Shares, \$100 Each.

This is to Certify that _____ is the owner of _____ full paid and non-assessable Shares of the Capital Stock of Innisfail Corporation transferable on the books of the Corporation, by the holder hereof in person by duly authorized Attorney, upon surrender of this Certificate properly endorsed.

Witness the seal of the Corporation and the signatures of its duly authorized officers affixed this _____ day of _____ 19____

Secretary.

Vice President.

(On side of stock certificate.)

Certificate No. _____ for _____ Shares Issued to _____ Dated _____ 19____ Transferred from _____ Dated _____ 19____

503 No. Original Certificate ----- No. Original Shares -----
 No. of Shares Transferred ----- Received Certificate No. -----
 For ----- Shares. ----- 19 -----
 Form 1510.*

(Back of stock certificate.)

NOTICE.—The Signature to this assignment must correspond with the name as written upon the face of the Certificate, in every particular, without alteration or enlargement or any change whatever.

For value Received, ----- hereby sell, assign, and transfer unto ----- Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint ----- Attorney to transfer the said stock on the Books of the within named Corporation with full power of substitution in the premises.

Dated -----, 19-----, In Presence of -----

NEW YORK CITY, June 15, 1926.

BOARD OF DIRECTORS OF INNISFAIL CORPORATION.

GENTLEMEN: I hereby resign as Vice President and a director of your Corporation, my resignation to take effect upon acceptance by you.

Very truly yours,

ANTHONY J. RUSSO.

504

NEW YORK CITY, June 15, 1926.

BOARD OF DIRECTORS OF INNISFAIL CORPORATION.

GENTLEMEN: I hereby resign as President and a director of your Corporation, my resignation to take effect upon acceptance by you.

Very truly yours,

FRANK A. GAYNOR.

NEW YORK CITY, June 15, 1926.

BOARD OF DIRECTORS OF INNISFAIL CORPORATION.

GENTLEMEN: I hereby resign as Secretary and Treasurer of your Corporation, my resignation to take effect upon acceptance by you.

Very truly yours,

HENRY M. HOGAN.

NEW YORK CITY, June 15, 1926.

BOARD OF DIRECTORS OF INNISFAIL CORPORATION.

GENTLEMEN: I hereby resign as a director of your Corporation, my resignation to take effect upon acceptance by you.

Very truly yours,

CHARLES R. CARROLL.

INNISFAIL CORPORATION

WAIVER OF NOTICE OF SPECIAL MEETING OF BOARD OF DIRECTORS

We, the undersigned, being all the Directors of Innisfail Corporation, do hereby waive all notice of the time, place, and purpose of a special meeting of the Board of Directors of said Company, and do hereby agree and consent that the same be held at No. 224 West 57th Street, in the Borough of Manhattan, City and State of New York, on the 12th day of March 1927, at 12 o'clock noon, and that all and any lawful business may be transacted at said meeting as may be deemed advisable by the Directors present thereat.

Dated March 12, 1927.

FRANK A. GAYNOR.
ANTHONY J. RUSSO.
CHARLES R. CARROLL.

INNISFAIL CORPORATION

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS

A special meeting of the Board of Directors of Innisfail Corporation was held at No. 224 West 57th Street, Borough of Manhattan, City and State of New York, on the 12th day of March 1927, at 12 o'clock noon, pursuant to written waiver of notice signed by all the Directors fixing said time and place.

506 There were present: Messrs. Frank A. Gaynor, Charles R. Carroll, and Anthony J. Russo, being all the members of the Board.

Mr. Russo acted as Chairman of the meeting, and Mr. Hogan, Secretary thereof.

The Secretary presented to the meeting and read a waiver of notice signed by all the Directors.

Upon motion duly made and seconded, the Secretary was instructed to file the original waiver of notice in the minute book immediately preceding the minutes of this meeting.

The minutes of the meeting of the Board of Directors held on the 14th day of June 1926 were read and approved.

The resignation of Frank A. Gaynor, Esq., as President and a Director was thereupon presented to the meeting, accepted, and ordered on file.

Upon motion duly made and seconded, Mr. John T. Smith was unanimously elected a Director in place of Mr. Gaynor, resigned. Mr. Smith thereupon took his place in the meeting.

Nominations of candidates for the office of President of the Corporation were declared in order.

Upon motion duly made and seconded, Mr. John T. Smith was duly nominated, and there being no further nominations, the Secretary was instructed by unanimous vote to cast the ballots of all

Directors present for Mr. Smith. The Secretary reported the ballots so cast, and thereupon Mr. John T. Smith was declared elected President.

The resignation of Charles R. Carroll, Esq., as a Director was thereupon presented to the meeting, accepted, and ordered on file.

507 Upon motion duly made and seconded, Mr. Henry M. Hogan was unanimously elected a Director in place of Mr. Carroll, resigned.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

Resolved, that a bank account be opened in Central Mercantile Bank & Trust Company in the name and for the use of this corporation, and that all moneys, checks, or other funds of this corporation be deposited in said Central Mercantile Bank & Trust Company, and until otherwise ordered, said Bank be and it is hereby authorized to make payments from the funds of the corporation on deposit with it, upon and according to the check of this corporation signed by its President; that said bank is authorized to receive for deposit or collection any items purporting to be endorsed in the corporate name of this corporation; and all such checks, drafts, notes, or other negotiable paper endorsed to or signed by this corporation, as aforesaid, including checks drawn to cash or bearer or to the individual order of any officer of the corporation, shall be honored and paid by said Bank without inquiry as to whether the same be drawn or required for the corporation's business or benefit, and all such payments shall be charged to the corporation's account; hereby ratifying and approving all that said Bank may do or cause to be done by virtue hereof. It is further

Resolved, that the following officer of the corporation, to wit: John T. Smith, President, is authorized to borrow money and obtain credit for this corporation from said Bank on such terms as may seem to him advisable, and make and deliver notes, drafts, 508 acceptances, assignments, or other agreements and any other obligations of this corporation therefor in form satisfactory to said bank, and as security therefor to pledge and transfer any stocks, bonds, bills receivable, bills of lading, warehouse receipts, or any other property of this corporation, with full power to endorse and execute guarantees in connection therewith in the name of this corporation, and also to discount any bills receivable or other negotiable paper of this corporation with full authority to endorse same in the name of this corporation; and generally to execute any other documents, or do any other act that may be necessary or required in connection with the corporation's account or dealing with the said Bank. And it is further

Resolved, that the foregoing resolutions shall continue in full force and effect until written notice of revocation duly signed by the President and Secretary in the name of the corporation and duly sealed

shall have been received by the said Central Mercantile Bank & Trust Company.

There being no further business, on motion the meeting was adjourned.

HENRY M. HOGAN,
Secretary.

509 MINUTES OF MEETING OF BOARD OF DIRECTORS OF INNISFAIL CORPORATION

A Special Meeting of the Board of Directors of Innisfail Corporation was held at No. 1775 Broadway, New York City, on the 30th day of December 1927, at 4:30 o'clock P. M., pursuant to written waiver of notice signed by all of the directors fixing said time and place.

There were present John T. Smith, Henry M. Hogan, Anthony J. Russo, being all the directors.

Mr. Smith presided and Mr. Hogan recorded.

The minutes of the meeting of the Board of Directors held on the 12th day of March 1927 were read and approved.

The President made a report of the business transacted by the company from the date of the last meeting of directors, including the purchase of 500 Shares of Gillette stock for \$49,750.00 and 1,700 Shares of Gimbel Bros. common stock for \$68,000.00, which, upon motion duly made and seconded, were unanimously approved.

The President also presented a statement of the income and expenses of the Company for the year ending December 31, 1927, which was unanimously approved.

There being no further business, upon motion, it was voted to adjourn.

HENRY M. HOGAN,
Secretary.

INNISFAIL CORPORATION

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS, JANUARY 24, 1928

At a Special Meeting of the Board of Directors of Innisfail Corporation, held at Number 1775 Broadway, Borough of Manhattan, City of New York, on the 24th day of January 1928, at three o'clock P. M., the following proceedings were had:

There were present: Messrs. John T. Smith, Henry M. Hogan, and Anthony J. Russo, being all of the Directors.

Mr. Smith presided and Mr. Hogan acted as Secretary of the meeting.

The minutes of the meeting of the Board of Directors, held on the 30th day of December 1927, were read and approved.

Upon motion, duly made and seconded, the following resolutions were unanimously adopted:

Resolved, that a bank account be opened in The New York Trust Company in the name and for the use of this corporation, and that all money, checks, or other funds of this corporation be deposited in said The New York Trust Company, and, until otherwise ordered, said Bank be, and it is hereby, authorized to make payments from the funds of the corporation on deposit with it, upon and according to the check of this corporation signed by John Thomas Smith, its President; that said bank is authorized to receive for deposit or collection any items purporting to be endorsed in the corporate name of this corporation; and all such checks, drafts, notes, or other negotiable paper endorsed to or signed by this corporation, as aforesaid, including checks drawn to cash or bearer or to the individual order of any officer of the corporation, shall be honored and paid by said Bank without inquiry as to whether the same be drawn or required for the corporation's business or benefit, and all such payments shall be charged to the corporation's account; hereby ratifying and approving all that said Bank may do or cause to be done by virtue hereof. It is further

Resolved, that the following officer of the corporation, to wit: John T. Smith, President, is authorized to borrow money and obtain credit for this corporation from said Bank on such terms as may seem to him advisable, and make and deliver notes, drafts, acceptances, assignments, or other agreements and any other obligations of this corporation therefor in form satisfactory to said Bank, and as security therefor to pledge and transfer any stocks, bonds, bills receivable, bills of lading, warehouse receipts, or any other property of this corporation, with full power to endorse and execute guarantees in connection therewith in the name of this corporation, and also to discount any bills receivable or other negotiable paper of this corporation with full authority to endorse same in the name of this corporation; and generally to execute any other documents, or do any other act that may be necessary or required in connection with the corporation's account or dealings with the said Bank. And it is further

512 Resolved, that the foregoing resolutions shall continue in full force and effect until written notice of revocation duly signed by the President and Secretary in the name of the corporation and duly sealed shall have been received by the said The New York Trust Company.

There being no further business, on motion the meeting was adjourned.

HENRY M. HOGAN,
Secretary.

Approved:

JOHN T. SMITH.

HENRY M. HOGAN.

ANTHONY J. RUSSO.

INNISFAIL CORPORATION

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS JULY 6, 1928

At a Special Meeting of the Board of Directors of Innisfail Corporation, held at #1775 Broadway, Borough of Manhattan, City of New York, on the 6th day of July 1928, at two-thirty o'clock P. M., the following proceedings were had:

There were present: Messrs. John T. Smith, Henry M. Hogan, Anthony J. Russo, being all of the Directors.

Mr. Smith, the President of the Corporation, presided, and Mr. Hogan, the Secretary of the Corporation, recorded.

513 The minutes of the meeting of the Board of Directors held on the 24th day of January 1928 were read and approved.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

Resolved, that John T. Smith, the President of this Corporation be, and he hereby is, authorized to loan the funds of the Corporation through The New York Trust Company and the said John T. Smith, President, is authorized to appoint The New York Trust Company as agent of this Corporation in placing loans and passing upon and selecting collateral thereto, it is further

Resolved, that all loans heretofore negotiated through The New York Trust Company by John T. Smith, President of this Corporation, be, and the same hereby are, ratified and approved.

There being no further business, upon motion, the meeting was adjourned.

HENRY M. HOGAN,
Secretary.

Approved:

JOHN T. SMITH.
ANTHONY J. RUSSO
HENRY M. HOGAN.

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INNISFAIL CORPORATION

WAIVER OF NOTICE OF SPECIAL MEETING OF BOARD OF DIRECTORS

We, the undersigned, being all the Directors of Innisfail Corporation, do hereby waive all notice of the time and place and purpose of a special meeting of the Board of Directors of that Company, and do hereby agree and consent that the same be held at No. 1775 Broadway, in the Borough of Manhattan, City, County, and State of New York, on the 26th day of December 1928, at 3:30 o'clock in the afternoon, and that any and all lawful business may be transacted at said meeting as may be deemed advisable by the Directors present.

Dated December 26th, 1928.

ANTHONY J. RUSSO.
HENRY M. HOGAN.
J. T. SMITH.

INNISFAIL CORPORATION

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS

At a special meeting of the Board of Directors of Innisfail Corporation held at No. 1775 Broadway, in the Borough of Manhattan, City, County, and State of New York, on the 26th day of December 1928, at 3:30 o'clock in the afternoon, the following proceedings were had:

515 There were present: Messrs. John T. Smith, Anthony J. Russo, and Henry M. Hogan, being all the members of the board.

Mr. John T. Smith, President of the Corporation, presided, and Mr. Henry M. Hogan, Secretary of the Corporation, recorded.

The minutes of the meeting of the Board of Directors held July 6th, 1928, were read and approved.

The President presented a statement of the income and expenses of the company for the year ending December 31st, 1928, which was unanimously approved.

On motion duly made and seconded and unanimously carried, it was

Resolved, that out of the surplus or net profits of the Corporation, a dividend be declared of \$700 per share, payable December 31st, 1928, to stockholders of record on December 30th, 1928.

There being no further business, upon motion, the meeting was adjourned.

HENRY M. HOGAN,
Secretary.

Approved:

ANTHONY J. RUSSO.

HENRY M. HOGAN.

JOHN T. SMITH.

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INNISFAIL CORPORATION

MINUTES OF DEFERRED ANNUAL MEETING OF STOCKHOLDERS

The deferred annual meeting of the stockholders of Innisfail Corporation was held at the office of the Corporation, No. 10 Cedar Avenue, Allenhurst, New Jersey, on the 28th day of November 1929, at eleven o'clock in the forenoon, pursuant to written waiver of notice signed by all the stockholders fixing the said time and place.

Mr. John T. Smith, President of the Corporation, was chosen Chairman of the meeting, and Mr. W. C. Durant recorded.

The Chairman presented to the meeting a waiver of notice signed by all the stockholders, and upon motion duly made and seconded, the Secretary was instructed to file the waiver of notice in the minute book immediately preceding the minutes of this meeting.

The roll of stockholders was called and the Chairman reported that there were present in person or by proxy stockholders holding 10 shares, namely, all the authorized and issued stock of the Corporation.

The Secretary of the meeting read the minutes of the meetings of the Board of Directors held on June 14th, 1926, March 12th, 1927, December 30th, 1927, January 24th, 1928, July 6th, 1928, and December 26th, 1928.

Upon motion duly made and seconded, it was unanimously

Resolved, that the proceedings of the Board of Directors as set forth in the minutes of the meetings held on June 14th, 1926, March 12th, 1927, December 30th, 1927, January 24th, 1928, July 6th, 1928, and December 26th, 1928, be, and the same hereby are, ratified, approved, and confirmed.

517 The meeting then proceeded to the election of Directors.

Upon motion duly made and seconded, Mary A. Smith and K. L. Durant were appointed inspectors of election.

After the vote had been cast, the inspectors reported that Messrs. John T. Smith, Henry M. Hogan, and Anthony J. Russo had each received a vote of all the stockholders present at the meeting.

The Chairman then stated that the election of Directors was in order.

John T. Smith, Henry M. Hogan, Anthony J. Russo, were thereupon duly elected Directors of the Company for the ensuing year or until their successors shall have been elected and qualified.

The Chairman presented to the meeting the Treasurer's report for the period of January 1st, 1929, to October 31st, 1929.

On motion duly made, seconded, and unanimously carried, it was

Resolved, that the report of the Treasurer as presented at the meeting be, and the same hereby is, approved.

The Chairman stated that it may be necessary from time to time to sell some of the securities of the Corporation, and upon motion duly made and seconded, and unanimously carried, it was

Resolved, that the President of this Corporation be, and he hereby is, authorized to sell any and all of the securities owned by this Corporation at such times and upon such prices, terms, and conditions as he may see fit.

After a general discussion of the affairs of the Corporation, the meeting adjourned.

W. C. DURANT, *Secretary*.

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INNISFAIL CORPORATION

CERTIFICATE OF INSPECTORS OF ELECTION

We, the undersigned, inspectors of election of the Innisfail Corporation, a corporation of the State of New Jersey, hereby certify

that at the deferred annual meeting of stockholders of said corporation held this day, the following directors were duly elected:

Directors	Number of votes
John T. Smith	100
Henry M. Hogan	100
Anthony J. Russo	100

Witness our hands this 28 day of November 1929.

K. L. DURANT,
MARY A. SMITH,
Inspectors of Election.

STATE OF NEW JERSEY,

County of Monmouth, ss:

On this _____ day of November, 1929, before me personally came _____ and _____ to me known and known to me to be the individuals described in and who executed the foregoing certificate and severally duly acknowledged to me that they executed the same for the uses and purposes therein stated.

Notary Public.

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INNISFAIL CORPORATION

WAIVER OF DEFERRED ANNUAL MEETING OF STOCKHOLDERS

We, the undersigned, being all the stockholders of Innisfail Corporation, do hereby waive all notice whatsoever of a deferred annual meeting of Stockholders, and do hereby agree and consent that the same be held at the office of the Corporation, No. 10 Cedar Avenue, Allenhurst, New Jersey, on the 28th day of November 1929, at eleven o'clock in the forenoon, for the election of Directors for the ensuing year and for such other business as may be deemed advisable by the stockholders present.

Dated November 27th, 1929.

JOHN T. SMITH.
HENRY M. HOGAN.
ANTHONY J. RUSSO.

INNISFAIL CORPORATION

PROXY FOR DEFERRED ANNUAL MEETING OF NOVEMBER 28, 1929

Know all men by these presents, that we, the undersigned stockholders of Innisfail Corporation, a corporation of New Jersey, do hereby make, constitute, and appoint W. C. Durant our true and lawful agent and attorney, for us and in our name, place, and stead, and in our behalf, to vote any and all shares of the common stock of Innisfail Corporation owned by us or standing in our name, as our proxy, at the deferred annual meeting of the stockholders of said Corporation, to be held at its office, No. 10 Cedar Avenue, Allenhurst, New Jersey, on Thursday, the 28th day of

November 1929, at eleven o'clock in the forenoon, or at any adjournment or adjournments thereof, according to the number of votes that we may at such meeting be entitled to cast; hereby granting to our said attorney full power and authority to act for us and in our name at said meeting, or any adjournment thereof, as fully as we could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that our said attorney, or his substitute, may do in the premises.

In witness whereof, we have hereunto set our hands and affixed our seals this 28th day of November 1929.

HENRY M. HOGAN. [SEAL]

ANTHONY J. RUSSO. [SEAL]

INNISFAIL CORPORATION

OATH OF INSPECTORS OF ELECTION

STATE OF NEW JERSEY,

County of Monmouth, ss:

I We, K. L. Durant and M. A. Smith, do severally solemnly swear that we will faithfully execute the duties of inspectors at the deferred annual meeting of stockholders of the Innisfail Corporation, to be held this day, with strict impartiality and according to the best of our ability.

K. L. DURANT.

M. A. SMITH.

Sworn to before me this 28th day of November 1929.

Notary Public.

INNISFAIL CORPORATION

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS

At a special meeting of the Board of Directors of Innisfail Corporation held at No. 1775 Broadway, Borough of Manhattan, City, County, and State of New York, on the 30th day of December 1929, at three o'clock in the afternoon, the following proceedings were had:

There were present: Messrs. John T. Smith, Anthony J. Russo, and Henry M. Hogan, being all the members of the Board.

Mr. John T. Smith was elected Chairman of the Meeting, and Mr. Hogan, the Secretary thereof.

The Chairman presented to the meeting the minutes of the annual meeting of stockholders held on November 28, 1929.

The Chairman then stated that it was necessary to elect officers for the ensuing year.

Upon motion duly made and seconded, the following were unanimously elected officers for the ensuing year: President, John T.

Smith; Vice President, Anthony J. Russo; Vice President, R. G. Tracy; Secretary, Henry M. Hogan; Treasurer, Henry M. Hogan; Assistant Secretary, Willard Doty; Assistant Treasurer, Willard Doty.

522 The Chairman presented to the meeting a financial statement of the company for the year ending December 31, 1929, which was unanimously approved.

There being no further business, it was voted to adjourn.

HENRY M. HOGAN,

Secretary.

Approved:

J. T. SMITH,

ANTHONY J. RUSSO,

HENRY M. HOGAN.

INNISFAIL CORPORATION

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS

At a special meeting of the Board of Directors of Innisfail Corporation held at No. 1775 Broadway, Borough of Manhattan, City, County, and State of New York, on the 28th day of August 1930, at three o'clock in the afternoon, pursuant to due notice, the following proceedings were had:

There were present: Messrs. Henry M. Hogan, Anthony J. Russo, being a majority of the members of the Board.

Mr. Anthony J. Russo, Vice President of the Corporation, acted as Chairman of the meeting; and Mr. Henry M. Hogan, Secretary recorded.

523 The Chairman stated that it was advisable to change the location of the principal office of the Corporation from No. 10 Cedar Avenue, Allenhurst, New Jersey, to No. 15 Exchange Place, Jersey City, N. J., and to appoint The Corporation Trust Company as the agent of the Corporation in place of John Thomas Smith.

Upon motion duly made and seconded and unanimously carried, it was

"Resolved, that the location of the principal office of this corporation within this State be, and the same hereby is, changed from No. 10 Cedar Avenue, Allenhurst, New Jersey, in the County of Monmouth, to No. 15 Exchange Place, in the City of New Jersey, State of New Jersey, County of Hudson. The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is The Corporation Trust Company."

There being no further business, it was voted to adjourn.

HENRY M. HOGAN,

Secretary of the Meeting.

INNISFAIL CORPORATION

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS

At a special meeting of the Board of Directors of Innisfail Corporation held at No. 1775 Broadway, Borough of Manhattan, City, County, and State of New York, on the 26th day of November 1930, at two o'clock in the afternoon, pursuant to due notice, the following proceedings were had:

There were present: Messrs. John T. Smith, Anthony J. Russo, Henry M. Hogan, being all members of the Board.

524 Mr. John T. Smith, President of the Corporation, acted as Chairman of the meeting; and Mr. Henry M. Hogan, Secretary, recorded.

Upon motion duly made and seconded and unanimously carried, it was

"Resolved, that Section 1, Article II of the Bylaws of this Corporation be amended to read as follows:

"SECTION 1. Annual Meeting.—The annual meeting of the stockholders for the purpose of electing directors and of transacting such other business as may come before it, shall be held at its principal office, No. 15 Exchange Place, Jersey City, New Jersey, or at its office in the City of New York, State of New York, or at such other places as the Secretary may, at the request of the President, designate, at 12 o'clock noon on the third Wednesday in April in each year, or if said day be a legal holiday, then on the next succeeding day not a holiday."

There being no further business, it was voted to adjourn.

H. M. HOGAN,

Secretary of the Meeting.

INNISFAIL CORPORATION

WAIVER OF NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

We, the undersigned, being all the stockholders of Innisfail Corporation, do hereby waive all notice whatsoever of the annual meeting of stockholders, and do hereby agree and consent that the same
525 be held at the office of the Corporation, No. 15 Exchange Place, Jersey City, New Jersey, on the 20th day of April 1932, at 12:00 o'clock noon, for the election of Directors for the ensuing year and for such other business as may be deemed advisable by the stockholders present.

J. T. SMITH.

ANTHONY J. RUSSO.

HENRY M. HOGAN.

INNISFAIL CORPORATION

PROXY FOR ANNUAL MEETING OF APRIL 20, 1932

Know all men by these presents, that we, the undersigned stockholders of Innisfail Corporation, a corporation of New Jersey, do hereby make, constitute, and appoint Alfred F. McCabe our true and lawful agent and attorney, for us and in our name, place, and stead and in our behalf, to vote any and all shares of the common stock of Innisfail Corporation owned by us or standing in our name, as our proxy, at the annual meeting of the stockholders of said corporation, to be held at its office, No. 15 Exchange Place, Jersey City, New Jersey, on Wednesday, the 20th day of April 1932, at 12:00 o'clock noon, or at any adjournment or adjournments thereof, according to the number of votes that we may at such meeting be entitled to cast; hereby granting to our said attorney full power and authority to act for us and in our name at said meeting, or any adjournment thereof, as fully as we could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that our said attorney, or his substitute, may do in the premises.

526 In witness whereof, we have hereunto set our hands and affixed our seals this 1st day of April 1932.

J. T. SMITH. [SEAL]

ANTHONY J. RUSSO. [SEAL]

HENRY M. HOGAN. [SEAL]

INNISFAIL CORPORATION

MINUTES OF ANNUAL MEETING

The annual meeting of the stockholders of Innisfail Corporation was held at the principal office of the Company, #15 Exchange Place, Jersey City, New Jersey, on the 20th day of April 1932, at 12:00 o'clock noon, pursuant to waiver of notice signed by all the stockholders.

The meeting was called to order by Mr. Alfred F. McCabe, who, upon motion duly made and seconded, was chosen Chairman of the meeting; and Mr. R. F. Lewis was appointed Secretary.

The Secretary presented the alphabetical list of the stockholders entitled to vote at this meeting and reported that the following stockholders, constituting the owners of all the issued and outstanding stock, were represented by proxy: John T. Smith, 98 shares; Henry M. Hogan, 1 share; Anthony J. Russo, 1 share.

The Chairman thereupon announced that a quorum was in attendance at the meeting.

The proxy presented was ordered to be filed with the Secretary of the meeting.

527 The Secretary presented and read to the meeting a waiver of notice of the meeting signed by all the stockholders entitled to vote.

The transfer book and the stock book were produced and remained during the meeting open to inspection.

The Secretary read the minutes of the deferred annual meeting of the stockholders held on November 28, 1929, and upon motion duly made, seconded, and carried, they were unanimously approved as read.

The meeting then proceeded to the election of directors.

Upon motion duly made and seconded, C. Poulston and L. Tarantino were appointed Inspectors of Election and duly sworn.

Messrs. John T. Smith, Henry M. Hogan, and Anthony J. Russo, all of whom were stockholders of the company, were duly nominated for directors of the company, to hold office for the ensuing year and until their respective successors are elected and qualified; and the foregoing nominations having been duly seconded, there being no further nominations, the Chairman declared the nominations closed.

The polls were open and the stockholders prepared and delivered their ballots to the Inspectors.

The Chairman presented to the meeting the Treasurer's report for the year ended December 31, 1931, which was read and ordered to be filed with the Secretary.

The polls having remained open for the period prescribed by the statute, were ordered closed and the Inspectors presented their report in writing showing that the following persons, stockholders of the Company, had received the greatest number of votes: John T. Smith, 100; Henry M. Hogan, 100; Anthony J. Russo, 100.

The Chairman thereupon declared the above named persons were duly elected Directors of the Company.

528 Upon motion duly made and seconded, it was

Resolved, that a meeting of the Board of Directors be held at No. 1775 Broadway, City, County and State of New York, at 11:00 o'clock in the forenoon on the 22nd day of April 1932.

Upon motion duly made and seconded, the Secretary was directed to file with the records of the Company, for the purpose of reference, the following papers:

- (1) List of Stockholders entitled to vote at this meeting.
- (2) Proxy presented at the meeting.
- (3) Waiver of notice of the meeting.
- (4) Inspectors' Oath and Report.

There being no further business, the meeting adjourned.

R. F. LEWIS, *Secretary*.

INNISFAIL CORPORATION

INSPECTORS' OATH AND REPORT

STATE OF NEW JERSEY,

County of Hudson, ss:

C. Poulston and L. Tarantino being duly sworn upon their respective oaths, do severally promise and swear that they will faithfully, honestly and impartially perform the duties of inspectors of election, and will to the best of their skill and ability conduct the election to be held this day for directors of the above named corporation, and a true report make of the same.

C. POULSTON,

L. TARANTINO.

Subscribed and sworn to before me this 20th day of April 1932.

HARRY W. MEEN,

Notary Public, N. J.

INNISFAIL CORPORATION

CERTIFICATE OF INSPECTORS OF ELECTION

We, the undersigned, inspectors of election of the Innisfail Corporation, a corporation of the State of New Jersey, hereby certify that at the annual meeting of stockholders of said corporation held this day, the following directors were duly elected:

Directors	Number of votes
John T. Smith.....	100
Henry H. Hogan.....	100
Anthony J. Russo.....	100

Witness our hands this 20th day of April 1932.

C. POULSTON,

L. TARANTINO.

Inspectors of Election.

INNISFAIL CORPORATION

Organized under the laws of New Jersey

ALPHABETICAL LIST OF STOCKHOLDERS

At closing of books on the 30th day of March 1932.

Name and residence	Shares Common Preferred
Henry M. Hogan, 47 Buckingham Road, West Hempstead, Long Island	1
Anthony J. Russo, 53 Buckingham Road, West Hempstead, Long Island	2
John T. Smith, 1115 Fifth Avenue, New York City, N. Y.	98

HENRY M. HOGAN, Sec.

INNISFAIL CORPORATION

MINUTES OF MEETING OF THE BOARD OF DIRECTORS

At a special meeting of the Board of Directors of Innisfail Corporation held at No. 1775 Broadway, Borough of Manhattan, City, County, and State of New York, on the 22nd day of April 1932, at 11:00 o'clock in the forenoon, the following proceedings were had.

There were present: Messrs. John T. Smith, Anthony J. Russo, Henry M. Hogan, being all the members of the Board.

Mr. Smith presided and Mr. Hogan recorded.

The Chairman presented to the meeting the minutes of the annual meeting of the stockholders held on April 20th, 1932.

The Chairman then stated it was necessary to elect officers for the ensuing year.

Upon motion duly made and seconded, the following were unanimously elected officers for the ensuing year: President, John T. Smith; Vice President, Anthony J. Russo and R. G. Tracy; Secretary & Treasurer, Henry M. Hogan; Asst. Secretary and Asst. Treasurer, Willard Doty.

The Chairman presented to the meeting, a financial statement of the company as of December 31, 1931, which was unanimously approved.

There being no further business it was voted to adjourn.

H. M. HOGAN, *Secretary*.

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INNISFAIL CORPORATION

BALANCE SHEET

DECEMBER 31, 1931

ASSETS

Cash in Bank (New York Trust Co.)	\$2,244.80
Investment Securities:	
6,500 shs. Aeronaut Consolidated Mining Co.	\$8,985.30
1,000 " Aldebaran Corporation	100,800.00
500 " Bondshares Fiscal Corporation	5,000.00
16,477 " Chrysler Corporation	524,234.32
11,168 " Ecuadorian Corporation Ord. Stock	31,306.26
31 " Ecuadorian Corporation Pfd. Stock	8,000.00
200 " Gimbel Brothers, Inc.	106,400.00
1,900 " Hudson Motor Car Co.	498.25
645 " White Knob Copper & Dev. Co. Pfd.	3.99
105 " White Knob Copper & Dev. Co. Com.	845.28
John T. Smith, Current Account	41,771.80
Total	\$89,250.16

LIABILITIES

Capital Stock (100 shares Par Value \$100.00)	10,000.00
Capital Surplus	863,741.00
Earned Surplus	15,509.16
Total	\$89,250.16

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INNISFAIL CORPORATION

STATEMENTS, YEAR ENDING DECEMBER 31, 1932

Innisfail Corporation Balance Sheet—December 31, 1932

ASSETS

Cash in Bank (New York Trust Co.)		\$17, 115. 03
Investment Securities:		
6,566 shs. Argonaut Consolidated Mining Co.	\$8, 985. 30	
1,000 " Aldebaran Corporation	160, 800. 00	
500 " Bondshares Fiscal Corporation	5, 000. 00	
16,477 " Chrysler Corporation	524, 234. 32	
11,168 " Ecuadorian Corporation Ord. Stock }		
31 " Ecuadorian Corporation Pfd. Stock }	31, 306. 26	
500 " The Electric Auto-Lite Company	9, 000. 00	
500 " Firestone Tire & Rubber Company	8, 500. 00	
332 " Gaynor Electric Company, Inc.	3, 320. 00	
1,533 " Investrad Corporation	6, 879. 80	
18,324 " National Baking Company Common	18, 324. 00	
800 " National Sugar Company of N. J.	16, 900. 00	
645 " White Knob Copper & Dev. Co. Pfd.	498. 25	
105 " White Knob Copper & Dev. Co. Com.	3. 99	791, 751. 92
Total		808, 866. 95

LIABILITIES

Capital Stock	\$10, 000. 00	
Capital Surplus	\$863, 741. 00	
Less—Earned Surplus Deficit	64, 874. 05	798, 866. 95
Total		808, 866. 95

(Italic figures were in red in original.)

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INNISFAIL CORPORATION

INCOME STATEMENT—YEAR ENDING DECEMBER 31, 1932

INCOME

Dividends:		
Chrysler Corporation	\$20, 596. 25	
Ecuadorian Corporation, Ordinary Stock	1, 116. 80	
Ecuadorian Corporation, Preferred Stock	217. 00	
Hudson Motor Car Company	475. 00	\$22, 405. 05
Interest on Bank Balances		45. 80
Total		22, 450. 85

EXPENSES

Salaries	\$500. 00	
New Jersey Franchise Tax	10. 00	
Sundries	61. 00	
Audit of Books	200. 00	
Total		1, 171. 00
Ordinary Net Income for Year		21, 279. 79
Deduct—Loss on sale of Securities		101, 663. 00
Net Loss for Year		80, 383. 21

EXPENSES—continued

*Loss on Sale of Securities:

1,000 Shs. Hudson Motor Car Co.:

Dec. 31, 1929, Cost ----- \$106,400.00

Aug. 4-8, 1932, Sold ----- 12,368.00

Loss -----

\$94,032.00

200 Shs. Gimbel Bros., Inc.:

Dec. 21, 1927, Cost ----- 8,000.00

Aug. 11, 1932, Sold ----- 369.00

Loss -----

7,631.00

101,663.00

(Italic figures were in red in original.)

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INNISFAIL CORPORATION

WAIVER OF NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

We, the undersigned, being all of the stockholders of Innisfail Corporation, do hereby waive all notice whatsoever of the annual meeting of stockholders, and do hereby agree and consent that the same be held at the office of the Corporation, No. 15 Exchange Place, Jersey City, New Jersey, on the 19th day of April 1933, at 12:00 o'clock noon, for the election of Directors for the ensuing year and for such other business as may be deemed advisable by the stockholders present.

Dated April 18, 1933.

ANTHONY J. RUSSO.

HENRY M. HOGAN.

J. T. SMITH.

INNISFAIL CORPORATION

PROXY FOR ANNUAL MEETING—APRIL 19, 1933

Know all men by these presents, that we, the undersigned stockholders of Innisfail Corporation, a corporation of New Jersey, do hereby make, constitute, and appoint Alfred F. McCabe our true and lawful agent and attorney, for us and in our name, place, and stead and in our behalf, to vote any and all shares of the common stock of Innisfail Corporation owned by us or standing in our name, as our proxy, at the annual meeting of the stockholders of said corporation, to be held at its office, No. 15 Exchange Place, Jersey City,

New Jersey, on Wednesday, the 19th day of April 1933, at 12:00 o'clock noon, or at any adjournment or adjournments thereof, according to the number of votes that we may at such meeting be entitled to cast; hereby granting to our said attorney full power and authority to act for us and in our name at said meeting, or any adjournment thereof, as fully as we could do if personally present, with full power of substitution and revocation, hereby

ratifying and confirming all that our said attorney, or his substitute, may do in the premises.

In witness thereof, we have hereunto set our hands and affixed our seals this 18th day of April 1933.

ANTHONY J. RUSSO. [SEAL]

HENRY M. HOGAN. [SEAL]

J. T. SMITH. [SEAL]

INNISFAIL CORPORATION

MINUTES OF ANNUAL MEETING

The annual meeting of the stockholders of Innisfail Corporation was held at the principal office of the company, #15 Exchange Place, Jersey City, New Jersey, on the 19th day of April 1933, at 12:00 o'clock noon, pursuant to waiver of notice signed by all the stockholders.

The meeting was called to order by Mr. Alfred F. McCabe, who, upon motion, duly made and seconded, was chosen Chairman of the meeting; and Mr. R. F. Lewis was appointed Secretary.

The Secretary presented the alphabetical list of the stockholders entitled to vote at this meeting and reported that the following stockholders, constituting the owners of all the issued and outstanding stock, were represented by proxy:

Names	Name of proxy	No. of shares
John T. Smith	Alfred F. McCabe	98
Henry M. Hogan	" " "	1
Anthony J. Russo	" " "	1
Total		100

The Chairman thereupon announced that a quorum was in attendance at the meeting.

The proxy presented was ordered to be filed with the Secretary of the meeting.

The Secretary presented and read to the meeting a waiver of notice of the meeting signed by all the stockholders entitled to vote.

The transfer book and stock book were produced and remained during the meeting open to inspection.

The Secretary read the minutes of the annual meeting of the stockholders held April 20, 1932, and upon motion duly made, seconded, and carried, they were unanimously approved as read.

The meeting then proceeded to the election of directors.

Upon motion duly made and seconded, J. Tarantino and W. Varnell were appointed Inspectors of Election and duly sworn.

Messrs. John T. Smith, Henry M. Hogan, and Anthony J. Russo, all of whom were stockholders of the company, were duly nominated for directors of the company, to hold office for the ensuing year and until their respective successors are elected and qualified; and the foregoing nominations having been duly seconded, there being no further nominations, the Chairman declared the nominations closed.

The polls were open and the stockholders prepared and delivered their ballots to the Inspectors.

The Chairman presented to the meeting the Treasurer's report for the year ending December 31, 1932, which was read and ordered to be filed with the Secretary.

538. The polls having remained open for the period prescribed by the statute, were ordered closed and the Inspectors presented their report in writing showing that the following persons, stockholders of the Company, had received the greatest number of votes: John T. Smith, 100; Henry M. Hogan, 100; Anthony J. Russo, 100.

The Chairman thereupon declared the above-named persons were duly elected Directors of the Company.

Upon motion duly made and seconded, it was

Resolved, that a meeting of the Board of Directors be held at No. 1775 Broadway, City, County, and State of New York, at two o'clock in the afternoon on the 21st day of April 1933.

Upon motion duly made and seconded, the Secretary was directed to file with the records of the Company, for the purpose of reference, the following papers:

- (1) List of stockholders entitled to vote at this meeting.
- (2) Proxy presented at the meeting.
- (3) Waiver of Notice of the meeting.
- (4) Inspector's Oath and Report.

There being no further business, the meeting adjourned.

R. F. LEWIS, *Secretary.*

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INNISFAIL CORPORATION

INSPECTOR'S OATH AND REPORT

STATE OF NEW JERSEY.

County of Hudson, ss:

L. Tarantino and W. Varnhell being duly sworn upon their respective oaths, do severally promise and swear that they will faithfully, honestly, and impartially perform the duties of inspectors of election, and will to the best of their skill and ability conduct the election to be held this day for directors of the above named corporation, and a true report made of the same.

L. TARANTINO.
W. VARNHELL.

Subscribed and sworn to before me this 19th day of April 1933.

[SEAL]

HARRY W. MEEN,
Notary Public, N. J.

INNISFAIL CORPORATION

CERTIFICATE OF INSPECTORS OF ELECTION

We, the undersigned, inspectors of election of the Innisfail Corporation, a Corporation of the State of New Jersey, hereby certify

that at the annual meeting of stockholders of said corporation held this day, the following directors were duly elected:

Directors	Number of votes
John T. Smith	100
Henry M. Hogan	100
Anthony J. Russo	100

Witness our hands this 19th day of April 1933.

L. TARANTINO,
W. VARDELL,
Inspectors of Election.

INNISFAIL CORPORATION

Organized Under the Laws of New Jersey

ALPHABETICAL LIST OF STOCKHOLDERS

At closing of books on the 29th day of March 1933

Name and residence	Shares Common Preferred
Anthony J. Russo, 53 Buckingham Road, West Hempstead, Long Island, N. Y.	1
Henry M. Hogan, 47 Buckingham Road, West Hempstead, Long Island, N. Y.	1
John T. Smith, 1115 Fifth Avenue, New York, N. Y.	98

H. M. HOGAN, Sec.

INNISFAIL CORPORATION

BALANCE SHEET—DECEMBER 31, 1932

ASSETS

Cash in Bank, New York Trust Co.	\$17,115.03
Investment Securities:	
6,568 shs. Argonaut Consolidated Mining Co.	\$8,985.30
1,000 " Aldebaran Corporation	100,800.00
500 " Bondshares Fiscal Corporation	5,000.00
18,477 " Chrysler Corporation	524,234.32
11,168 " Ecuadorian Corp. Ltd. Ord. Stock	31,306.26
31 " Ecuadorian Corp. Ltd. Pfd. Stock	
500 " The Electric Auto-Lite Co.	9,000.00
500 " Firestone Tire & Rubber Co.	6,500.00
332 " Gaynor Electric Company, Inc.	3,320.00
1,553 " Investrad Corporation	6,879.80
18,324 " National Baking Company Common	18,324.00
800 " National Sugar Company of N. J.	16,900.00
645 " White Knob Copper & Dev. Co. Pfd.	438.25
105 " White Knob Copper & Dev. Co. Com.	3.99
Total	791,751.92
	808,866.95

LIABILITIES

Capital Stock	\$10,000.00
Capital Surplus	\$863,741.00
Less—Earned Surplus (Deficit)	(64,874.05)
Total	798,866.95
	808,866.95

INNISFAIL CORPORATION

INCOME STATEMENT—YEAR ENDING DECEMBER 31, 1932

INCOME	
Dividends:	
Chrysler Corporation	\$20,595.25
Ecuadorian Corporation Ltd. Ord. Stock	1,116.80
Ecuadorian Corporation Ltd. Pfd. Stock	217.00
Hudson Motor Car Company	475.00
	\$22,405.05
Interest on Bank Balances	45.80
Total	22,450.85

EXPENSES	
Salaries	\$900.00
New Jersey Franchise Tax	10.00
Audit of Books	200.00
Sundries	61.06
Total	1,171.06

Ordinary Net Income for Year	21,279.79
Deduct—Loss on sale of securities	101,663.00

Net Loss for Year	80,383.21
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(Italic figures were in red in original.)

INNISFAIL CORPORATION

MINUTES OF MEETING OF BOARD OF DIRECTORS

At a special meeting of the Board of Directors of Innisfail Corporation held at No. 1775 Broadway, Borough of Manhattan, City, County, and State of New York, on the 21st day of April 1933 at 2:00 o'clock in the afternoon, the following proceedings were had. There were present: Messrs. John T. Smith, Anthony J. Russo, Henry M. Hogan, being all the members of the Board.

Mr. Smith presided and Mr. Hogan recorded.

The Chairman presented to the meeting the minutes of the annual meeting of the stockholders held on April 19, 1933.

The Chairman then stated that it was necessary to elect officers for the ensuing year.

Upon motion duly made and seconded, the following were unanimously elected officers for the ensuing year: President, John T. Smith; Vice President, Anthony J. Russo; Secretary & Treasurer, Henry M. Hogan; Asst. Secretary and Asst. Treasurer, Willard Doty.

The Chairman presented to the meeting, a financial statement of the Company as of December 31, 1932, which was unanimously approved.

544 The Chairman reported that during the year 1932 the Corporation had purchased:

18,324 Shs.	National Baking Co. for	\$18,324.00
332 "	Gaylor Electric Co. Inc. for	3,320.00
1,553 "	Investrad Corporation for	6,879.80
500 "	Firestone Tire & Rubber Co. for	6,500.00
500 "	Electric Auto-Lite Co. for	9,000.00
800 "	National Sugar Refining Co. for	16,900.00

and that the corporation had sold:

200 Shs.	Gimbel Bros. Inc. for	360.00
1,900 "	Hudson-Motor Car Co. for	12,368.00

which transactions, upon motion duly made and seconded, were unanimously approved.

The Chairman then presented a Syndicate Agreement between R. R. Young and Frank F. Kolbe, doing business under the name of Young, Kolbe & Co., as syndicate managers, in connection with the organization of a syndicate to trade in stocks and bonds of Pathe Exchange, Inc., U. S. Government bonds and notes of General Motors Acceptance Corporation, and stated that the corporation had entered into said Syndicate Agreement in an amount not to exceed \$100,000.00 of which amount \$62,500.00 had already been subscribed.

Upon motion duly made and seconded, the participation of the corporation in the syndicate was unanimously approved and it was resolved that a copy of the said Syndicate Agreement be attached to the minutes of this meeting.

There being no further business it was voted to adjourn.

H. M. HOGAN, *Secretary*.

545 SYNDICATE AGREEMENT

Dated April 3, 1933

Duplicate Copy.

This Agreement entered into as of the 3rd day of April 1933, by and between R. R. Young and Frank F. Kolbe, copartners doing business under the firm name and style of Young, Kolbe & Co., as syndicate managers, (hereinafter called the "managers"), parties of the first part, and the subscribers hereto, severally (each of whom is hereinafter referred to as the "subscribers"), parties of the second part; witnesseth:

Whereas, the parties hereto desire to form themselves into a syndicate for the purpose of trading in stocks and bonds of Pathe Exchange, Inc., and/or United States Government bonds and/or notes of the General Motors Acceptance Corporation.

Now, therefore, in consideration of the premises and of the sum of One (\$1) Dollar by each party to the other in hand paid, receipt whereof is hereby acknowledged, the subscribers hereby agree with one another and with the managers as follows:

1. A syndicate is hereby established among the several parties hereto for the purpose of trading in stocks and bonds of Pathe Exchange, Inc., in United States Government bonds and in notes of General Motors Acceptance Corporation. The subscribers hereby

appoint Young, Kolbe & Co., as managers of said syndicate and said managers agree to act in that capacity subject to the terms and conditions of this agreement.

546 2. The subscribers severally agree to pay to the syndicate managers the sums below set after their respective names as the amount of their contribution to the syndicate. They further agree that the managers may call upon any of them from time to time for payment for all or any part of the amount subscribed by them, and each subscriber agrees to pay promptly the amount of such call or calls up to the amount of his individual liability as indicated by the interest in the syndicate subscribed for by him hereunder.

3. In the case of the failure of any subscriber to make payments pursuant to a call referred to in paragraph 2 herein the managers may sell the rights and interest of the defaulting subscriber in and under this agreement and any stocks represented thereby at public or private sale at any time thereafter without further advertisement or notice and after deducting all interest or other costs and expenses. The residue sum shall be applied on any liability or indebtedness of such defaulting subscriber, and if there be any deficiency the managers shall pay and discharge the same. Any overplus shall be paid over to such defaulting subscriber.

The managers may purchase on such sale the rights and interests of any defaulting subscriber for the benefit of the nondefaulting subscribers and may call for and apportion any assessment to pay the same.

4. Nothing contained in this agreement or otherwise shall constitute the subscribers partners with or agents for one another or for the managers to render them liable to contribute in any event more than the amount subscribed for by them as indicated hereunder.

5. The managers are hereby authorized to enter into any and all agreements and undertakings which in their judgment may be
547 for the best interests of the subscribers with reference to the matters contemplated in this agreement, but the managers shall have no right, power, or authority to in any wise bind any subscriber hereto for any amount over and above the amount of the subscription hereto of any such subscriber.

6. This syndicate shall continue in force for the period of six months after this agreement becomes effective. At the termination of this syndicate the managers shall prepare a statement of the syndicate's operations, settling all of its operations. The managers shall then distribute 5% of the then net profits to Stewart Webb of New York City. Any moneys and/or securities belonging to the syndicate remaining shall be distributed by the managers pro rata among the various subscribers on the basis of the amount of each individual subscription.

7. The managers may become subscribers hereunder with the same rights and obligations as other subscribers and shall be permitted to participate as such in the profits of this syndicate.

8. The managers shall open and maintain a custodian account at the Bankers Trust Company, Madison Avenue and 57th Street Branch, for the deposit of all securities and obligations which may come into their possession during the transaction of the business of this syndicate.

9. The managers shall also open a business account at the said Bankers Trust Company, Madison Avenue and 57th Street Branch, for the purpose of depositing funds of this syndicate which shall be subject to withdrawal on their order.

10. In the event of death, resignation, or incapacity to act of the managers, their successors shall be appointed in writing by a majority in amount of the remaining subscribers who upon signing this agreement shall be qualified as a manager.

11. Each subscriber hereby ratifies, assents to, and agrees to be bound by any action of the manager assumed to be taken under this agreement and agrees to perform his undertakings herein as stated in this agreement to the full extent of the amount of his subscription, but in no event or under no circumstance shall a subscriber be called upon to pay or be liable for any amount beyond the amount of his subscription together with interest thereon.

12. The failure of any subscriber to perform any of his undertakings hereunder shall not affect or release any other subscriber.

13. This agreement shall be in all things binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

14. This agreement may be executed in several counterparts, each of which when so executed shall be deemed to be the original, and such counterparts shall together constitute but one and the same instrument.

In witness whereof, the managers, parties of the first part, and the subscribers, parties of the second part, have signed this agreement as of the 3rd day of April 1933.

YOUNG, KOLBE & Co.—FRANK F. KOLBE.

YOUNG, KOLBE & Co.—R. R. YOUNG.

549 Broseco Corporation, by D. Brown, Pres. & Treas., % Frank L. Carey, 7 West 10th Street, Wilmington, Delaware	\$460,000. 00
Atina Corporation, by R. R. Young, 810 Broad Street, Newark, New Jersey	200,000. 00
Aldebaran Corporation, by Albert Bradley, Vice-President, 3108 Dupont Building, Wilmington, Delaware	200,000. 00
Frank F. Kolbe, 1775 Broadway, Borough of Manhattan, City of New York	40,000. 00
Innisfail Corporation, by John T. Smith, Pres., 1775 Broadway, Borough of Manhattan, City of New York	100,000. 00

INNISFAIL CORPORATION

MINUTES OF MEETING OF BOARD OF DIRECTORS

At a special meeting of the Board of Directors of Innisfail Corporation held at No. 1775 Broadway, Borough of Manhattan, City.

County, and State of New York, on the 29th day of December 1933 at 2:00 o'clock in the afternoon, the following proceedings were had:

There were present: Messrs. John T. Smith, Anthony J. Russo, Henry M. Hogan, being all the members of the Board.
550 Mr. Smith, the President, presided; and Mr. Hogan, Secretary, recorded.

The minutes of the meeting of the Board of Directors held on the 21st day of April 1933 were read and approved.

The Treasurer made a report of the financial condition of the Corporation.

Upon motion duly made and seconded, it was unanimously Resolved, that a dividend of \$100 a share be paid on December 29, 1933 to stockholders of record.

The Chairman reported that arrangements had been made to purchase from Mrs. G. Beekman Hoppin a mortgage in the principal sum of \$130,000 on property at Ox Pasture Road, Southampton, Long Island, which, upon motion duly made and seconded, was approved; and the proper officers of the Corporation were authorized to take an assignment of said bond and mortgage in the name of H. M. Hogan.

The President also reported the sale of 500 shares of the Capital Stock of the Bondshares Fiscal Corporation for the sum of \$10, which was approved.

The resignation of Anthony J. Russo as Vice President of the Corporation was presented to the meeting and accepted and ordered on file; and upon motion duly made and seconded, Mr. G. B. Smith was elected Vice President at a salary of \$2,400 a year.

The resignation of H. M. Hogan, the Secretary, was presented to the meeting and accepted and ordered on file; and Mr. Gerard C. Smith was elected Secretary in his place at a salary of \$2,400 a year.

There being no further business, the meeting adjourned.

H. M. HOGAN, *Secretary*.

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INNISFAIL CORPORATION

MINUTES OF ANNUAL MEETING OF STOCKHOLDERS, APRIL 18, 1934

The annual meeting of the stockholders of Innisfail Corporation was held at the principal office of the company, No. 15 Exchange Place, in the City of Jersey City, State of New Jersey, on the 18th day of April 1934, at 12:00 o'clock noon, pursuant to waiver of notice signed by all the stockholders.

The meeting was called to order by Mr. Alfred F. McCabe, who, upon motion duly made and seconded, was chosen Chairman of the meeting; and Mr. R. F. Lewis was appointed Secretary.

The Secretary presented the alphabetical list of the stockholders entitled to vote at this meeting and reported that the following stockholders, constituting the owners of all the issued and outstanding stock, were represented by proxy: John T. Smith, 98 shares; Henry M. Hogan, 1 share; Anthony J. Russo, 1 share.

The Chairman thereupon announced that a quorum was in attendance at the meeting.

The proxy presented was ordered to be filed with the Secretary of the meeting.

The Secretary presented and read to the meeting a waiver of notice of the meeting signed by all the stockholders entitled to vote.

The transfer book and stock book were produced and remained during the meeting open to inspection.

552 The Secretary read the minutes of the annual meeting of the stockholders held April 19, 1933, and, upon motion duly made, seconded, and carried, they were unanimously approved as read:

The meeting then proceeded to the election of directors.

Upon motion duly made and seconded, L. Tarantino and C. Poulston were appointed Inspectors of Election and duly sworn.

Messrs. John T. Smith, Henry M. Hogan, and Anthony J. Russo, all of whom were stockholders of the company, were duly nominated for Directors of the company, to hold office for the ensuing year and until their respective successors are elected and qualified; and the foregoing nominations having been duly seconded, there being no further nominations, the Chairman declared the nominations closed.

The polls were open and the stockholders prepared and delivered their ballots to the Inspectors.

The Chairman presented to the meeting the Treasurer's report for the year ending December 31, 1933, which was read and ordered to be filed with the Secretary.

The polls, having remained open for the period prescribed by the statute, were ordered closed, and the Inspectors presented their report in writing showing that the following persons, stockholders of the company, had received the greatest number of votes: John T. Smith, 100; Henry M. Hogan, 100; Anthony J. Russo, 100.

The Chairman thereupon declared the above-named persons were duly elected Directors of the Company.

Upon motion duly made and seconded, it was

Resolved, that a meeting of the Board of Directors be held at No. 1775 Broadway, City, County, and State of New York, at 11:00 o'clock in the forenoon, on the 23rd day of April 1934.

553 Upon motion duly made and seconded, the Secretary was directed to file with the records of the Company, for the purpose of reference, the following papers:

- (1) List of stockholders entitled to vote at this meeting.
- (2) Proxy presented at the meeting.
- (3) Waiver of notice of the meeting.
- (4) Inspector's Oath and Report.

There being no further business, the meeting adjourned.

R. F. LEWIS, *Secretary*.

INNISFAIL CORPORATION

Organized Under the Laws of New Jersey

ALPHABETICAL LIST OF STOCKHOLDERS

At closing of books on the 28th day of March 1934

Name and residence	Shares Common Preferred
Henry M. Hogan, 47 Buckingham Road, West Hempstead, Long Island, N. Y.	1
Anthony J. Russo, 53 Buckingham Road, West Hempstead, Long Island, N. Y.	1
John T. Smith, 1115 Fifth Avenue, New York, New York	98

JOHN T. SMITH, President

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INNISFAIL CORPORATION

WAIVER OF NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

We, the undersigned, being all of the stockholders of Innisfail Corporation, do hereby waive all notice whatsoever of the annual meeting of stockholders, and do hereby agree and consent that the same be held at the office of the Corporation, No. 15 Exchange Place, Jersey City, New Jersey, on the 18th day of April 1934, at 12:00 o'clock noon, for the election of Directors for the ensuing year and for such other business as may be deemed advisable by the stockholders present.

Dated April 2nd, 1934.

ANTHONY J. RUSSO

JOHN T. SMITH.

H. M. HOGAN.

INNISFAIL CORPORATION

PROXY FOR ANNUAL MEETING—APRIL 18, 1934

Know all men by these presents, that we, the undersigned stockholders of Innisfail Corporation, a corporation of New Jersey, do hereby make, constitute, and appoint Alfred F. McCabe, our true and lawful agent and attorney for us and in our name, place, and stead and in our behalf to vote any and all shares of the common stock of Innisfail Corporation owned by us or standing in our name, as our proxy, at the annual meeting of the stockholders of said corporation to be held at its office, No. 15 Exchange Place, Jersey City, New Jersey, on Wednesday the 18th day of April 1934, at 12:00 o'clock noon, or at any adjournment or adjournments thereof, according to the number of votes that we may at such meeting be entitled to cast; hereby granting to our said attorney full power and authority to act for us and in our name at said meeting or any adjournment thereof, as fully as we could do if personally

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present, with full power of substitution and revocation, hereby ratifying and confirming all that our said attorney, or his substitute, may do in the premises.

In witness whereof, we have hereunto set our hands and affixed our seals this 2nd day of April 1934.

ANTHONY J. RUSSO
JOHN T. SMITH.
H. M. HOGAN.

INNISFAIL CORPORATION

INSPECTOR'S OATH AND REPORT

STATE OF NEW JERSEY,

County of Hudson, ss:

L. Tarantino and C. Poulston, being duly sworn upon their respective oaths, do severally promise and swear that they will faithfully, honestly, and impartially perform the duties of inspectors of election, and will to the best of their skill and ability conduct the election to be held this day for Directors of the above named Company, and a true report make of the same.

L. TARANTINO.
C. POULSTON.

Subscribed and sworn to before me this 18th day of April 1934.

[SEAL]

HARRY W. MEEN,
Notary Public, N. J.

556 CERTIFICATE OF INSPECTORS OF ELECTION OF INNISFAIL CORPORATION

We, the undersigned, inspectors of election of Innisfail Corporation, a corporation of the State of New Jersey, hereby certify that at the annual meeting of stockholders of said corporation held this day, the following Directors were duly elected:

Directors	Number of votes
John T. Smith	100
Henry M. Hogan	100
Anthony J. Russo	100

Witness our hands this 18th day of April 1934.

L. TARANTINO,
C. POULSTON,

Inspectors of Election.

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INNISFAIL CORPORATION

INCOME STATEMENT—YEAR ENDING DECEMBER 31, 1933

Income:

Dividends	\$11,190.04
Interest	1,512.21
	\$12,702.25

INCOME STATEMENT—YEAR ENDING DECEMBER 31, 1933—continued

Expenses:		
Taxes	-----	\$110.00
Proportionate share of Loss:		
Young Kolbe & Co. Syndicate	-----	477.48
Sundries	-----	96.20
		<u>\$683.68</u>
Ordinary Net Income for year	-----	12,018.57
Deduct Net Loss on Sale of Securities	-----	1,083.80
Net Income for year	-----	<u>10,934.77</u>

BALANCE SHEET—DECEMBER 31, 1933

Assets:		
Cash in Bank	-----	\$142,302.43
Investment Securities	-----	612,287.36
John T. Smith—Current Account	-----	55,211.93
		<u>\$809,801.72</u>
Liabilities:		
Capital Stock	-----	10,000.00
Capital Surplus	-----	803,741.00
Earned Surplus (Deficit)	-----	(63,939.28)
		<u>\$809,801.72</u>

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INNISFAIL CORPORATION

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS

At a special meeting of the Board of Directors of Innisfail Corporation, held at No. 1775 Broadway, Borough of Manhattan, City, County, and State of New York, on the 23rd day of April 1934, at 11:00 o'clock in the forenoon, the following proceedings were had:

There were present: Messrs. John T. Smith, Henry M. Hogan, Anthony J. Russo, being all the members of the Board.

Mr. Smith presided and Mr. Hogan recorded.

The Chairman presented to the meeting the minutes of the annual meeting of the stockholders held on the 18th day of April 1934.

The Chairman then stated that, it was necessary to elect officers for the ensuing year.

Upon motion duly made and seconded, the following were unanimously elected officers for the ensuing year: President, John T. Smith; Vice President, Gregory B. Smith; Secretary, Gerard C. Smith; Treasurer, Henry M. Hogan; Asst. Secy. and Treas., Willard Doty.

The Chairman presented to the meeting a financial statement of the Company as of December 31, 1933, which was unanimously approved.

There being no further business, it was voted to adjourn.

H. M. HOGAN, *Secretary.*

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INNISFAIL CORPORATION

MINUTES OF MEETING OF BOARD OF DIRECTORS

At a special meeting of the Board of Directors of Innisfail Corporation held at No. 1775 Broadway, Borough of Manhattan, City, County, and State of New York, on the 28th day of December 1934,

at 2:00 o'clock in the afternoon, the following proceedings were had:

There were present: Messrs. John T. Smith, Anthony J. Russo, Henry M. Hogan, being all the members of the Board.

Mr. Smith, the President, presided; and Mr. Willard Doty recorded.

The minutes of the meeting of the Board of Directors held on the 29th day of December 1933 were read and approved.

A report as to the financial condition of the corporation was presented at the meeting and ordered on file.

Upon motion duly made and seconded, it was unanimously Resolved, that a dividend of \$170 a share to be paid on December 28, 1934, to stockholders of record at the close of business.

The Chairman reported that 28,000 shares of the Capital Stock of the Siscoe Gold Mining Company had been purchased on October 15, 1934, for \$75,000, which was approved.

560 The resignation of Mr. G. B. Smith as Vice President was presented at the meeting and accepted and ordered on file; and

Upon motion duly made and seconded, M. V. Smith was elected Vice President at a salary of \$2,400 a year.

The resignation of Mr. Russo as a Director was presented to the meeting, accepted, and ordered on file; and

Upon motion duly made and seconded, M. V. Smith was elected a Director in place of Mr. Russo, resigned; and M. V. Smith thereupon entered the meeting.

The resignation of Mr. John T. Smith as President and Director of the Corporation was presented to the meeting, accepted, and ordered on file; and

Upon motion duly made and seconded, Mr. G. B. Smith was elected as President and Director in place of Mr. Smith, resigned, at a salary of \$2,400 a year as President; and Mr. G. B. Smith thereupon entered the meeting.

The resignation of Mr. H. M. Hogan as Treasurer and Director was presented at the meeting and accepted and ordered on file; and

Upon motion duly made and seconded, Mr. Gerard C. Smith was elected a Director in place of Mr. Hogan, resigned; and Mr. Willard Doty was elected Treasurer in place of Mr. Hogan, resigned.

Upon motion duly made, seconded, and unanimously carried, it was

Resolved, that The New York Trust Company of the City of New York is designated a depository of this corporation; and

Further resolved, that all drafts, checks, and other instruments or orders for the payment of money drawn against the account or accounts of this corporation shall be signed by the President or a Vice President or Treasurer or an Assistant Treasurer jointly with Henry M. Hogan; and

561 Further resolved, that the depository above designated is authorized to place to the credit of the account, or any of the accounts, of this corporation, funds, drafts, checks, or other property

delivered to it for deposit for account of this corporation, provided that if any such funds, drafts, checks or other property shall bear, or be accompanied by directions (by whomever made) for deposit to a specific account, then such deposit shall be to the credit of such specific account; and

Further resolved, that the depository is hereby directed to accept and/or pay and/or apply without limit as to amount, without inquiry and without regard to the application of any such draft, check, instrument, or order for the payment of money, or the proceeds thereof, any draft, check, instrument, or order for the payment of money drawn on such account or accounts, which draft, check, or instrument, or order for the payment of money bears the signature or signatures as required by these resolutions, including drafts, checks, instruments, or orders for the payment of money, to the order of any person whose signature appears thereon, or of any other officer or officers, agent or agents of this corporation, which may be deposited with, or delivered or transferred to, the depository or other bank or trust company, or to any other person, firm, or corporation, for the personal credit or account of any such officer or agent; and the depository shall not be liable for any disposition which any such officer or agent shall make of all or any part of such draft, check, instrument, or order for the payment of money, or the proceeds thereof, notwithstanding that such disposition may be for the
562 personal account or benefit or in payment of the individual obligation of any such officer or agent to the depository or otherwise.

There being no further business, the meeting adjourned.

WILLARD DOTY,

Secretary pro tem.

INNISFAIL CORPORATION.

MINUTES OF THE ANNUAL MEETING OF THE STOCKHOLDERS—APRIL 17TH 1935

The annual meeting of the stockholders of Innisfail Corporation was held at the principal office of the company, No. 15 Exchange Place, in the City of Jersey City, State of New Jersey, on the 17th day of April 1935, at 12:00 o'clock noon, pursuant to waiver of notice signed by all the stockholders.

The meeting was called to order by Mr. Alfred F. McCabe, who, upon motion duly made and seconded, was chosen Chairman of the meeting, and Mr. R. F. Lewis was appointed Secretary.

The Secretary presented the alphabetical list of the stockholders entitled to vote at this meeting, and reported that the following stockholders, constituting the owners of all the issued and outstanding stock, were represented by proxy: M. V. Smith, 33 shares; Gregory B. Smith, 33 shares; Gerard C. Smith, 33 shares.

The Chairman thereupon announced that a quorum was in attendance at the meeting.

563 The proxy presented was ordered to be filed with the Secretary of the meeting.

The Secretary presented and read to the meeting a waiver of notice of the meeting signed by all the stockholders entitled to vote.

The transfer book and stock book were produced and remained during the meeting open to inspection.

The Secretary read the minutes of the annual meeting of the stockholders held April 18th, 1934, and upon motion duly made, seconded, and carried, they were unanimously approved as read.

The meeting then proceeded to the election of directors.

Upon motion duly made and seconded W. L. Halle and D. O. Newman were appointed Inspectors of Election and duly sworn.

M. V. Smith, Gregory B. Smith, and Gerard C. Smith, all of whom were stockholders of the company, were duly nominated for Directors of the company, to hold office for the ensuing year and until their respective successors are elected and qualified; and the foregoing nominations having been duly seconded, there being no further nominations, the Chairman declared the nominations closed.

The polls were open and the stockholders prepared and delivered their ballots to the Inspectors.

The Chairman presented to the meeting the Treasurer's report for the year ending December 31st, 1934, which was read and ordered to be filed with the Secretary.

The polls having remained open for the period prescribed by the statute, were ordered closed and the Inspectors presented their report in writing showing that the following persons, stockholders of the company, had received the greatest number of votes: M. V. Smith, 99; Gregory B. Smith, 99; Gerard C. Smith, 99.

564 The Chairman thereupon declared the above named persons were duly elected Directors of the company.

Upon motion duly made and seconded, it was:

Resolved that a meeting of the Board of Directors be held at No. 1775 Broadway, City, County, and State of New York, at three o'clock in the afternoon, on the 22nd day of April 1935.

Upon motion duly made, and seconded, the Secretary was directed to file with the records of the company, for the purpose of reference, the following papers:

- (1) List of stockholders entitled to vote at this meeting.
- (2) Proxy presented at the meeting.
- (3) Waiver of notice of the meeting.
- (4) Inspector's Oath and Report.

There being no further business, the meeting adjourned.

R. F. Lewis,
Secretary.

INNISFAIL CORPORATION

Organized Under the Laws of New Jersey

ALPHABETICAL LIST OF STOCKHOLDERS

At closing of books on the 23rd day of March 1935

Name and residence	Shares	
	Common	Preferred
M. V. Smith, 1115 Fifth Avenue, New York, N. Y.	331 2/3	---
Gregory B. Smith, 1115 Fifth Avenue, New York, N. Y.	331 2/3	---
Gerard C. Smith, 1115 Fifth Avenue, New York, N. Y.	331 2/3	---
WILLARD DOTY,		Treasurer.

INNISFAIL CORPORATION

INSPECTOR'S OATH AND REPORT

STATE OF NEW JERSEY.

County of Hudson, ss.

W. L. Halle and D. O. Newman being duly sworn upon their respective oaths, do severally promise and swear that they will faithfully, honestly, and impartially perform the duties of inspectors of election, and will to the best of their skill and ability conduct the election to be held this day for Directors of the above-named company, and a true report make of the same.

W. L. HALLE.

D. O. NEWMAN.

Subscribed and sworn to before me this 17th day of April 1935.

[SEAL]

CHARLES G. POULSTON.

Notary Public, N. J.

CERTIFICATE OF INSPECTORS OF ELECTION OF INNISFAIL CORPORATION

We, the undersigned, Inspectors of Election of Innisfail Corporation, a corporation of the State of New Jersey, hereby certify that at the annual meeting of stockholders of said corporation held this day, the following Directors were duly elected:

Directors	Number of votes
M. V. Smith	99
Gregory B. Smith	99
Gerard C. Smith	99

Witness our hands this 17th day of April 1935.

W. L. HALLE,

D. O. NEWMAN.

(Inspectors of Election.)

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INNISFAIL CORPORATION

INCOME STATEMENT—YEAR ENDING DECEMBER 31, 1934

Income:			
Dividends	-----	\$15,860.00	
Interest	-----	10,495.00	
Profit on Sale of Securities	-----	337.75	\$26,693.74
Expenses:			
Salaries	-----	4,800.00	
Taxes	-----	1,079.31	
Sundries	-----	173.92	8,053.23
Net Income for Year	-----		20,640.51

BALANCE SHEET—DECEMBER 31, 1934

Assets:			
Cash in Bank	-----	9,400.67	
Investment Securities	-----	829,101.21	838,501.88
Liabilities:			
John T. Smith—Current Account	-----	24,191.00	
Reserve for Federal Income Tax	-----	868.65	
Capital Stock	-----	10,000.00	
Capital Surplus	-----	863,741.00	
Earned Surplus (Deficit)	-----	60,298.77	838,501.88

568 EARNED SURPLUS ACCOUNT

Deficit—Jan. 1, 1934	-----		63,939.28
Net Income for Year 1934	-----	20,640.51	
Less—Dividends Paid (\$170.00 per share)	-----	17,000.00	3,640.51
Deficit—End of Year	-----		60,298.77

(Italic figures were red in original.)

INNISFAIL CORPORATION

PROXY FOR ANNUAL MEETING—APRIL 17TH, 1935

Know all men by these presents, that we, the undersigned stockholders of Innisfail Corporation, a corporation of New Jersey, do hereby make, constitute, and appoint Alfred F. McCabe our true and lawful agent and attorney for us and in our name, place, and stead and in our behalf, to vote any and all shares of the common stock of Innisfail Corporation owned by us or standing in our name, as our proxy, at the annual meeting of the stockholders of said corporation, to be held at its office, No. 15 Exchange Place, Jersey City, New Jersey, on Wednesday, the 17th day of April 1935, at 12:00 o'clock noon, or at any adjournment or adjournments thereof, according to the number of votes that we may at such meeting be entitled to cast; hereby granting to our said attorney full power and authority to act for us and in our name at said meeting, or any adjournment thereof, as fully as we could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that our said attorney, or his substitute, may do in the premises.

In witness whereof, we have hereunto set our hands and affixed our seals this 16th day of April 1935.

GERARD C. SMITH,
GREGORY B. SMITH,
MAUREEN V. SMITH.

INNISFAIL CORPORATION

WAIVER OF NOTICE OF ANNUAL MEETING OF STOCKHOLDERS— APRIL 17TH, 1935

We, the undersigned, being all the stockholders of Innisfail Corporation, do hereby waive all notice whatsoever of the annual meeting of stockholders and do hereby agree and consent that the same be held at the office of the Corporation, No. 15 Exchange Place, Jersey City, New Jersey, on the 17th day of April 1935, at 12:00 o'clock noon, for the election of Directors for the ensuing year and for such other business as may be deemed advisable by the stockholders present.

Dated April 12th, 1935.

GERARD C. SMITH,
By H. M. HOGAN, *Attorney*,
GREGORY B. SMITH,
MAUREEN V. SMITH.

INNISFAIL CORPORATION

MINUTES OF SPECIAL MEETING OF THE BOARD OF DIRECTORS— APRIL 22ND, 1935

At a special meeting of the Board of Directors of Innisfail Corporation, held at No. 1115 Fifth Avenue, in the Borough of Manhattan, City, County, and State of New York, on the 22nd day of April 1935, at 3:00 o'clock in the afternoon, the following proceedings were had:

There were present: Gregory B. Smith, Gerard C. Smith, Maureen V. Smith, being all the members of the Board.

Mr. Gregory B. Smith presided; and Mr. Gerard C. Smith recorded.

The Chairman presented to the meeting the minutes of the annual meeting of the stockholders held on the 17th day of April 1935, and announced that at that meeting the stockholders had elected as Directors of the corporation Gregory B. Smith, Gerard C. Smith, and Maureen V. Smith.

The Chairman then presented to the meeting the financial statement of the company as of December 31st, 1934, which was approved and ordered filed.

The Chairman presented to the meeting the balance sheet and income statement of the company covering the period from January 1st, 1935, to March 31st, 1935, which were approved and ordered filed.

Upon motion duly made, seconded, and unanimously carried, it was

Resolved that the action of the officers in making the following purchases on the following dates in the following amounts be ratified, approved, and confirmed:

February 4, 1935—1,000 shares—Interborough Rapid Transit Company—
Voting Trust Certificates.....\$14,900
April 15, 1935—8,000 shares—Transcontinental & Western Air, Inc.....\$68,800
April 19, 1935—Insurance policies Nos. 902453 and 902454 issued by The
Travelers Insurance Company on the life of John T. Smith.....\$23,093

The Chairman stated that it was necessary to elect officers for the ensuing year.

Upon motion duly made and seconded, the following were unanimously elected officers for the ensuing year: President, Gregory B. Smith; Vice President, Maureen V. Smith; Secretary, Gerard C. Smith; Treasurer, Willard Doty.

Upon motion duly made, seconded, and unanimously carried, it was Resolved that the following salaries be paid to the following officers for the ensuing year: President, \$2,400; Vice President, \$2,400; Secretary, \$2,400.

There being no further business, it was voted to adjourn.

Secretary.

572 INNISFAIL CORPORATION

INCOME STATEMENT—JANUARY 1, 1935 TO MARCH 31, 1935

Income:

Dividends:

Chrysler Corporation.....	\$2,119.25	
Columbia Gas & Electric Corp.....	5.00	
Ecuadorian Corporation, Ltd.....	331.86	
Firestone Tire & Rubber Co.....	50.00	
General Motors Corporation.....	54.25	
National Sugar Refining Co.....	400.00	
Siscoe Gold Mines Limited.....	3,080.00	
White Knob Copper & Develop. Co.....	228.85	
		\$8,269.21

Profit on liquidation of 1,553 shs. Investrad Corporation.....	6,235.40	
--	----------	--

12,504.61.

Expenses:

Salaries.....	\$1,800.00	
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Taxes:

Canadian Dividend Taxes.....	\$154.00	
Check Taxes.....	.08	
	154.08	

Canadian Exchange—Discount.....	9.64	
		1,963.72

Net Income—Three Months.....	10,540.89	
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INNISFAIL CORPORATION

BALANCE SHEET—MARCH 31, 1935

ASSETS		
Cash in Bank		\$4,787.32
Investment Securities:		
16,216 shs. Argonaut Consolidated Mining Co.	\$17,187.80	
1,000 " Aldebaran Corporation	160,800.00	
8,477 " Chrysler Corporation	269,705.52	
1,000 " Columbia Gas & Electric Corp. Common Stock	18,766.00	
4 " Columbia Gas & Electric Corp. 5% Preferred Stock	381.00	
11,168 " Ecuadorian Corp. Ord. Stock }	31,306.28	
31 " Ecuadorian Corp. Pfd. Stock }		
500 " Electric Auto-Lite Company	9,000.00	
500 " Firestone Tire & Rubber Co.	6,500.00	
332 " Gaynor Electric Company, Inc.	3,320.00	
217 " General Motors Corporation	6,916.88	
1,000 " Interborough Rapid Transit Co.	14,900.00	
18,324 " National Baking Company	18,324.00	
800 " National Sugar Refining Co.	16,900.00	
1,400 " Pathe Exchange, Inc., Pfd. "A"	3,042.81	
436 " Pathe Exchange, Inc., 8% Pfd.	30,508.59	
\$38,000 " Pathe Exchange, Inc., 7% Bonds	26,685.59	
28,000 " Siscoe Gold Mines Limited	74,926.73	
4,677 " White Knob Copper & Dev. Co., Pfd.	4,863.03	
105 " White Knob Copper & Dev. Co. Com.	3.99	
Mortgage Investment		714,038.26
		130,000.00
		848,825.61

LIABILITIES		
John T. Smith—Current Account		24,191.00
Reserve for Federal Income Taxes		651.40
Capital Stock	10,000.00	
Capital Surplus	863,741.00	
Earned Surplus (Deficit)	(49,757.88)	
		823,983.12
		848,825.61

INNISFAIL CORPORATION

MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS—DECEMBER 23RD, 1935

At a special meeting of the Board of Directors of Innisfail Corporation, held at No. 1115 Fifth Avenue, in the Borough of Manhattan, City, County, and State of New York, on the 23rd day of December 1935, at 3:00 o'clock in the afternoon the following proceedings were had:

There were present: G. C. Smith, M. V. Smith, being a majority of the members of the Board.

M. V. Smith presided, and G. C. Smith recorded.

The Treasurer reported that the corporation had been offered by William S. Knudsen, as Trustee, 20,000 shares of the Class A Stock

of General Motors Securities Company. This Class A Stock is exchangeable for an equivalent number of shares of the Common Stock of General Motors Corporation.

After an informal discussion of this matter with the members of the Board of Directors, the corporation had decided to purchase the stock from Mr. Knudsen, and agreed to pay him $54\frac{1}{2}$ a share for 10,000 shares, and $55\frac{1}{4}$ a share for 10,000 shares, making a total cost of \$1,097,500.

The corporation on December 20th, 1935, sold 7,800 shares of General Motors Corporation Common Stock through Laird, Bissell & Meeds, as follows: 7,500 shares at $55\frac{1}{2}$ a share and 300 shares at $55\frac{3}{8}$ a share, and on December 21st, 1935, through the same brokers sold 700 shares at $55\frac{3}{8}$ a share and 1,500 shares at $55\frac{1}{2}$ a share, 575 and on December 23rd, 1935, sold 10,000 shares of General Motors Common Stock through G. M. P. Murphy & Co., as follows: 9,800 shares at $56\frac{1}{4}$ a share and 200 shares at $56\frac{3}{8}$ a share, making the total amount realized from the sale of 20,000 shares of the General Motors Corporation Common Stock, \$1,113,227.62, or a profit of \$15,727.62. The 20,000 shares of Class A Stock was this day delivered to the corporation and surrendered to General Motors Securities Company, which in turn has delivered 20,000 shares of the Common Stock of General Motors Corporation.

After discussion, it was upon motion duly made, seconded, and unanimously carried.

Resolved that the corporation ratify and confirm the acts of its officers in acquiring from William S. Knudsen, as Trustee, 20,000 shares of the Class A Stock of General Motors Securities Company at \$1,097,500; the surrender of said Class A Stock for 20,000 shares of General Motors Common Stock and the sale of the 20,000 shares of the Common Stock of General Motors Corporation for \$1,113,227.62; leaving a net profit to the corporation of \$15,727.62.

In connection with the surrender of the Class A Stock of General Motors Securities Company, the following preambles and resolution were adopted.

Whereas, the corporation is desirous of surrendering 20,000 shares of the Class A Stock of General Motors Securities Company in exchange for a proportionate part of the Class A net assets of General Motors Securities Company, and

576- Whereas, General Motors Securities Company has requested that as a condition for said surrender, that the attached Agreement of Indemnification be executed.

Now, therefore, be it

Resolved that the Treasurer of the corporation, Willard Doty, be, and he hereby is, authorized to endorse said certificates for 20,000 shares of the Class A Stock of General Motors Securities Company and to execute the Agreement of Indemnification for and on behalf of this corporation, and to surrender said 20,000 shares of Class A

Stock, and to receive in exchange a proportionate part of the Class A net assets of General Motors Securities Company.

In order that the sale of the General Motors Common Stock might be effected, it was upon motions duly made, seconded, and unanimously carried.

Resolved that Willard Doty, the Treasurer of the corporation, be, and he hereby is, authorized to sell 20,000 shares of the Common Stock of General Motors Corporation now owned by this corporation at such times and at such prices as he may deem advisable, and that the said Willard Doty, Treasurer of the corporation, be, and he hereby is, authorized to execute any and all papers and documents in connection therewith and to endorse said certificates.

There being no further business, it was voted to adjourn.

GERARD C. SMITH, *Secretary*.

Approved:

577

EXHIBIT 8

AGREEMENT OF INDEMNIFICATION

Upon Liquidation of Class A Stock of General Motors Securities Company

Whereas, the undersigned is the owner of shares of the Class "A" stock of General Motors Securities Company, a corporation organized under the laws of the State of Delaware; and

Whereas, under the provisions of Article 4 of the Certificate of Incorporation of said Company, shares of Class "A" stock may be surrendered by a holder thereof in exchange for a proportionate part of the Class "A" net assets of the Company, which right is conditioned upon the undertaking by the stockholder to indemnify the Company against expenses and liabilities resulting from or attributable to such exchange; and

Whereas, the undersigned desires to surrender shares of the Class "A" stock of said Company upon the terms and basis of exchange set forth in the Certificate of Incorporation aforesaid;

Now, therefore, in consideration of the distribution to him, upon the surrender of said shares, of a proportionate part of the Class "A" net assets of General Motors Securities Company, on the terms and basis of exchange aforesaid, the undersigned hereby binds himself, his heirs, executors, administrators, and assigns, to indemnify and save harmless General Motors Securities Company and its stockholders from and against any and all expenses, taxes,

578 penalties, and interest which may be imposed upon or demandable from said Company, or its stockholders, resulting

from or attributable to the acceptance of the shares so surrendered by the undersigned and the distribution to him of such assets, together with any and all charges and outlays incidental thereto, including a reasonable amount as attorneys' fees; and the undersigned agrees that upon demand by the Company on behalf of itself or any stockholder, he will pay over to it the amount of such liability or will furnish to the Company such adequate security in lieu thereof as may be acceptable to the Company.

It is understood that the undersigned shall not be relieved of his obligation hereunder by failure of General Motors Securities Company or its stockholders to contest the correctness of any such liability which may be imposed upon or demandable from it or them; provided, however, that it shall be the duty of the Company, or of any stockholder directly affected, promptly after receipt or knowledge of any such demand or assessment to notify the undersigned in writing, mailed to his last known address, of the nature and amount of the liability asserted and of its intention either to concede or to contest the validity thereof. The decision not to contest said liability or claim shall rest exclusively with the directors elected by the Class A stockholders.

Dated at _____ this _____ day of _____ A. D. 193____
[L. S.]

Witness:

579

INNISFAIL CORPORATION

MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS— DECEMBER 24TH, 1935

At a special meeting of the Board of Directors of Innisfail Corporation, held at No. 1115 Fifth Avenue, in the Borough of Manhattan, City, County, and State of New York, on the 24th day of December 1935, at 7:00 o'clock in the evening, the following proceedings were had:

There were present: M. V. Smith, G. C. Smith, being a majority of the members of the Board.

M. V. Smith presided, and G. C. Smith recorded.

The Treasurer reported that the corporation had been offered by John L. Pratt 3,500 shares of the Class A Stock of General Motors Securities Company and that after an informal discussion on this matter with members of the Board, the corporation had decided to purchase the same from Mr. Pratt and agreed to pay him $55\frac{7}{8}$ a share for 1,100 shares, and $55\frac{3}{4}$ a share for 2,400 shares, making a total cost of \$194,488.50.

The corporation has this day sold, through Laird, Bissell & Meeds, 2,400 shares of General Motors Corporation Common Stock at $56\frac{3}{4}$

and 1,100 shares of General Motors Corporation Common Stock at 56 $\frac{7}{8}$, making the total amount realized from the sale of 3,500 shares of General Motors Common Stock of \$197,988.50, or a profit of \$3,500.

The 3,500 shares of Class A Stock of General Motors Securities Company was this day delivered to the corporation and surrendered to General Motors Securities Company in exchange for 3,500 shares of the Common Stock of General Motors Corporation.

580 After discussion, it was upon motion duly made, seconded and unanimously carried

Resolved that the corporation ratify and confirm the action in acquiring from John L. Pratt, 3,500 shares of the Class A Stock of General Motors Securities Company at \$194,488.50, the surrender of the said 3,500 shares of Class A Stock for 3,500 shares of the Common Stock of General Motors Corporation, and the sale of the said 3,500 shares for \$197,988.50 leaving a net profit to the corporation of \$3,500.

In connection with the surrender of the Class A Stock of General Motors Securities Company, the following preambles and resolution were adopted.

Whereas the corporation is desirous of surrendering 3,500 shares of the Class A Stock of General Motors Securities Company in exchange for a proportionate part of the Class A net assets of General Motors Securities Company, and

Whereas General Motors Securities Company has requested that as a condition for said surrender, that the attached Agreement of Indemnification be executed.

Now, therefore, be it

Resolved that the Treasurer of the corporation, Willard Doty, be and he hereby is authorized to endorse said certificates for 3,500 shares of the Class A Stock of General Motors Securities Company, and to execute the Agreement of Indemnification for and on behalf of this corporation, and to surrender said 3,500 shares of Class A Stock, and to receive in exchange a proportionate part of the Class A net assets of General Motors Securities Company.

581 The Treasurer submitted an income statement for the eleven months ended November 30th, 1935, together with a balance sheet and a forecast of the cash position to the end of the year.

An extended discussion took place in regard to the business of the corporation for the ensuing year.

Upon motion duly made, seconded and unanimously carried, the report of the Treasurer was accepted, approved, and ordered on file.

The Chairman submitted to the meeting a statement in the amount of \$2,400, from Henry M. Hogan, covering professional services rendered in the year 1935.

Upon motion duly made, seconded and unanimously carried, the statement was approved and ordered paid.

Upon motion duly made, seconded, and unanimously carried, it was

Resolved that Commercial Trust Company of New Jersey be designated as a depository of this corporation and that funds of this corporation deposited in said company be subject to withdrawal upon checks, notes, drafts, bills of exchange, acceptances, undertakings, or other orders for the payment of money when signed on behalf of this corporation by H. M. Hogan with anyone of the following: Gerard C. Smith, Gregory B. Smith, Willard Doty.

Resolved that Commercial Trust Company of New Jersey is hereby authorized to pay any such orders and also to receive the same for credit of, or in payment from the payee or any other holder without inquiry as to the circumstances of issue or the disposition of the proceeds even if drawn to the individual order of any signing officer or tendered in payment of his individual obligation.

Resolved that H. M. Hogan with anyone of the following: Gerard C. Smith, Gregory B. Smith, Willard Doty, are hereby authorized to discount any bills receivable or other negotiable paper held by this corporation with full authority to endorse same in the name of this corporation.

Resolved that the President of this corporation be and he hereby is authorized to certify to Commercial Trust Company of New Jersey the foregoing resolutions and that the provisions thereof are in conformity with the charter and by-laws of this corporation.

Upon motion duly made, seconded, and unanimously carried, it was

Resolved that access to any Safe or Safes rented by this Company in the vaults of the Commercial Trust Company of New Jersey, standing in the name of Innisfail Corporation, shall be by any two of the following persons: John T. Smith, Gerard C. Smith, Gregory B. Smith, Willard Doty, Henry M. Hogan.

Upon motion duly made, seconded, and unanimously carried, it was

Resolved that a special dividend is hereby declared on the capital stock of the corporation of 8,600 shares of the capital stock of Transcontinental & Western Air, Inc., being at the rate of 86 shares of the stock of Transcontinental & Western Air, Inc., for each share of this corporation, and 436 shares of the 7% preferred stock of Pathe Film Corporation, being at the rate of 436 shares of the stock of the Pathe Film Corporation for each share of the stock of this corporation, to be paid on December 28th, 1935, to stockholders of record of Innisfail Corporation at the close of business on December 26th, 1935.

There being no further business, the meeting adjourned.

GERARD C. SMITH, *Secretary*.

Approved.

EXHIBIT 8

AGREEMENT OF INDEMNIFICATION

UPON LIQUIDATION, OF CLASS A STOCK OF GENERAL MOTORS SECURITIES COMPANY

Whereas, the undersigned is the owner of shares of the Class "A" stock of General Motors Securities Company, a corporation organized under the laws of the State of Delaware; and

Whereas, under the provisions of Article 4 of the Certificate of Incorporation of said Company, shares of Class "A" stock may
584 be surrendered by a holder thereof in exchange for a proportionate part of the Class "A" net assets of the Company, which right is conditioned upon the undertaking by the stockholder to indemnify the Company against expenses and liabilities resulting from or attributable to such exchange; and

Whereas, the undersigned desires to surrender shares of the Class "A" stock of said Company upon the terms and basis of exchange set forth in the Certificate of Incorporation aforesaid;

Now, therefore, in consideration of the distribution to him, upon the surrender of said shares of a proportionate part of the Class "A" net assets of General Motors Securities Company, on the terms and basis of exchange aforesaid, the undersigned hereby binds himself, his heirs, executors, administrators, and assigns, to indemnify and save harmless General Motors Securities Company and its stockholders from and against any and all expenses, taxes, penalties, and interest which may be imposed upon or demandable from said Company, or its stockholders, resulting from or attributable to the acceptance of the shares so surrendered by the undersigned and the distribution to him of such assets, together with any and all charges and outlays incidental thereto, including a reasonable amount as attorneys' fees; and the undersigned agrees that upon demand by the Company on behalf of itself or any stockholder, he will pay over to it the amount of such liability or will furnish to the Company such adequate security in lieu thereof as may be acceptable to the Company.

It is understood that the undersigned shall not be relieved of his obligation hereunder by failure of General Motors Securities Company or its stockholders to contest the correctness of any such liability which may be imposed upon or demandable from it or them; provided, however, that it shall be the duty of the Company, or of
585 any stockholder directly affected, promptly after receipt or knowledge of any such demand or assessment to notify the undersigned in writing, mailed to his last known address, of the nature and amount of the liability asserted and of its intention either to concede or to contest the validity thereof. The decision

not to contest said liability or claim shall rest exclusively with the directors elected by the Class A stockholders.

Dated at _____, this _____ day of _____ A. D. 193____

[L. S.]

Witness: _____

INNISFAIL CORPORATION

BALANCE SHEET—NOVEMBER 30, 1935

ASSETS		
Cash in Bank		\$78,934.46
Investment Securities:		
16,216 shs. Argonaut Consolidated Mining Co.	\$17,187.80	
1,000 " Aldebaran Corporation	160,800.00	
7,477 " Chrysler Corporation	237,889.42	
1,000 " Columbia Gas & Electric Corp. common	18,766.00	
4 " Columbia Gas & Electric Corp. 5% pfd.	381.09	
11,168 " Ecuadorian Corp. ord. stock	31,306.26	
31 " Ecuadorian Corp. pfd. stock		
500 " The Electric Auto-Lite Co.	9,000.00	
500 " Firestone Tire & Rubber Company	6,500.00	
232 " Gaynor Electric Company, Inc.	3,320.00	
217 " General Motors Corporation	6,916.88	
1,000 " Interborough Rapid Transit Co.	14,000.00	
18,324 " National Baking Company, Common	18,324.00	
800 " National Sugar Refining Co.	16,900.00	
4,980 " Pathe Film Corp.—Common	10,918.41	
436 " Pathe Film Corp.—7% Preferred	22,632.99	
28,000 " Siscoe Gold Mines, Ltd.	74,926.73	
8,000 " Transcontinental & Western Air, Inc.	68,800.00	
4,577 " White Knob Copper & Development Co. Pfd.	4,863.03	
105 " White Knob Copper & Development Co. Com.	3.99	
		724,336.60
Mortgage Investment—Southampton, N. Y.		130,000.00
Insurance Investment		53,750.00
		<u>987,021.06</u>

LIABILITIES		
John T. Smith—Current Account		92,903.23
Reserve For Federal Income Tax		217.17
Capital Stock	10,600.00	
Capital Surplus	863,741.00	
Earned Surplus	20,069.66	
		<u>893,810.66</u>
		987,021.06

INNISFAIL CORPORATION

INCOME STATEMENT—JANUARY 1, 1935, TO NOVEMBER 30, 1935

INCOME		
Dividends:		
Argonaut Consolidated Mining Co.	\$810.80	
Chrysler Corporation	10,596.25	
Columbia Gas & Electric Corp.—Common	200.00	

INCOME—continued

Dividends—Continued.

Columbia Gas & Electric Corp.—Pfd	\$20.
Ecuadorian Corporation—Ord. Stock	593.44
Ecuadorian Corporation—Preferred	217.00
The Electric Auto-Lite Company	150.00
Firestone Tire & Rubber Company	200.00
General Motors Corporation	271.25
National Sugar Refining Company	1,000.00
Pathe Film Corporation 7% Preferred	381.50
Siscoe Gold Mines, Limited	5,880.00
White Knob Copper & Development Co., Ltd.	457.70

\$21,677.44

Interest:

Mortgage—Southampton	3,900.00
Pathe Exchange, Inc., 7% Bonds	1,330.00

5,230.00

Profit on Sale of Securities

60,654.73

87,562.67

EXPENSES

Salaries-----\$6,600.00

Taxes:

Capital Stock Tax	204.00
New Jersey Franchise Tax	10.00
Canadian Dividend Taxes	294.00

508.00

Sundries

86.24

7,104.24

Net Income

80,368.43

588

DECEMBER 24, 1935.

INNISPAIL CORPORATION

Forecast of Cash Position to December 31, 1935

		Receipts	Disbursements	Balance
1935				
Nov. 30	Bank Balance			\$78,886.43
Dec. 3	Purchase 14,800 shs. White Knob Copper & Development Co. Pfd.		\$35,500.00	21,416.43
9	Purchase 10,000 shs. White Knob Copper & Development Co. Common		750.00	22,066.43
12	General Motors—Dividend	\$217.00		22,283.43
16	Argonaut Consol. Mining Co., Dividend	3,567.52		25,850.95
	Federal Income Tax		*217.17	25,633.78
17	White Knob Copper & Dev. Co., Dividend	5,813.10		31,446.88
	Siscoe Gold Mines, Ltd., Dividend	1,330.00		32,776.88
30	Interest—Southampton, Mortgage	3,900.00		36,676.88
	Salaries		600.00	36,076.88
31	Chrysler Corporation, Dividend	5,607.75		41,684.63
	Profit on General Motors Securities Transaction	19,247.62		60,932.25
	Sundry Expenses		220.00	60,712.25
		39,682.99	57,317.17	

INNISFAIL CORPORATION

MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS—
FEBRUARY 1ST, 1936

At a special meeting of the Board of Directors of Innisfail Corporation, held at No. 1115 Fifth Avenue, in the Borough of Manhattan, City of New York, State of New York, on the 1st day of February 1936, at 4:00 o'clock in the afternoon, pursuant to due notice, the following proceedings were had:

There were present: G. B. Smith, M. V. Smith, G. C. Smith, being all the members of the Board.

G. B. Smith, President of the Corporation, presided and G. C. Smith, Secretary of the corporation, recorded.

The Chairman submitted to the meeting the balance sheet as of December 31st, 1935, together with an income statement for the year.

Upon motion duly made, seconded, and unanimously carried, it was Resolved that the statement of the Treasurer be accepted, approved, and ordered on file.

The Chairman stated that he had subscribed on behalf of the corporation to 120 shares of the capital stock par value \$100 per share, of Certosa Corporation, a New York corporation, at \$150 per share, representing all the authorized capital stock of that corporation.

Upon motion duly made, seconded, and unanimously carried, it was

Resolved that the action of the President in subscribing to the 120 shares of the \$100 par value capital stock of Certosa Corporation at \$150 per share, and paying therefor, the sum of Eighteen Thousand Dollars (\$18,000), be and the same is ratified, approved, and confirmed.

After a general discussion of the business of the corporation and a review of its investments, it was, upon motion duly made, seconded and unanimously carried.

Resolved that the President of the corporation be, and he hereby is, authorized to sell 1,000 shares of the Interborough Rapid Transit Company stock now owned by the corporation at such times and at such prices as he may determine.

There being no further business, it was voted to adjourn.

GERARD C. SMITH, *Secretary*.

INNISFAIL CORPORATION

MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS—
MARCH 13, 1936

At a special meeting of the Board of Directors of Innisfail Corporation, held at No. 1115 Fifth Avenue, in the Borough of Man-

hattan, City, County, and State of New York, on the 13 day of March 1936 at 8 P. M. o'clock in the forenoon, the following proceedings were had:

There were present: G. B. Smith, G. C. Smith, M. V. Smith, 591 being all the members of the Board.

G. B. Smith presided and M. V. Smith recorded.

The Chairman stated that the corporation was the owner of 31 shares of the Preferred Stock of The Ecuadorian Corporation Limited and that the same were now carried on the London Register of the corporation, and that it was desirable that the said stock be transferred from the London to the American Register of The Ecuadorian Corporation Limited.

On motion duly made, seconded, and unanimously carried, it was Resolved that the President of the corporation, G. B. Smith, be and he hereby is authorized to deliver to The Ecuadorian Corporation Limited 31 shares of the Preferred Stock of the Ecuadorian Corporation Limited now owned by Innisfail Corporation, and to execute any and all instruments and documents that may be necessary to transfer the said stock from the London to the American Register of The Ecuadorian Corporation Limited.

Upon motion duly made and seconded, it was

Resolved that E. J. McCabe be and he hereby is appointed Assistant Secretary at a salary of One Hundred Dollars (\$100) a month, commencing March 1, 1936.

There being no further business, it was voted to adjourn.

GERARD C. SMITH, *Secretary*.

Approved:

GREGORY B. SMITH.

MAUREEN V. SMITH.

592

INNISFAIL CORPORATION

MINUTES OF THE ANNUAL MEETING OF THE STOCKHOLDERS—APRIL 13TH, 1936

The annual meeting of the stockholders of Innisfail Corporation was held at the principal office of the company, No. 15 Exchange Place, in the City of Jersey City, State of New Jersey, on the 13th day of April 1936, at 12:00 o'clock noon, pursuant to waiver of notice signed by all the stockholders.

The meeting was called to order by Mr. Alfred F. McCabe, who, upon motion duly made and seconded, was chosen Chairman of the meeting, and Mr. Charles G. Poulston was appointed Secretary.

The Secretary presented the alphabetical list of the stockholders entitled to vote at this meeting, and reported that the following stockholders, constituting the owners of all the issued and outstanding stock, were represented by proxy: M. V. Smith, 33 shares; Gregory B. Smith, 33 shares; Gerard C. Smith, 33 shares.

The Chairman thereupon announced that a quorum was in attendance at the meeting.

The proxy presented was ordered to be filed with the Secretary of the meeting.

The Secretary presented and read to the meeting a waiver of notice of the meeting signed by all the stockholders entitled to vote.

The transfer book and stock book were produced and remained during the meeting open to inspection.

593 The Secretary read the minutes of the annual meeting of the stockholders held April 17th, 1935, and upon motion duly made, seconded, and carried, they were unanimously approved as read.

The meeting then proceeded to the election of directors.

Upon motion duly made and seconded, William Dudley and Henry Hansen were appointed Inspectors of Election and duly sworn.

M. V. Smith, Gregory B. Smith, and Gerard C. Smith, all of whom were stockholders of the company, were duly nominated for Directors of the company, to hold office for the ensuing year and until their respective successors are elected and qualified; and the foregoing nominations having been duly seconded, there being no further nominations, the Chairman declared the nominations closed.

The polls were open, and the stockholders prepared and delivered their ballots to the Inspectors.

The Chairman presented to the meeting the Treasurer's report for the year ending December 31st, 1935, which was read and ordered to be filed with the Secretary.

The polls having remained open for the period prescribed by the statute, were ordered closed, and the Inspectors presented their report in writing showing that the following persons, stockholders of the company, had received the greatest number of votes: M. V. Smith, 99; Gregory B. Smith, 99; Gerald C. Smith, 99.

The Chairman thereupon declared the above-named persons were duly elected Directors of the company.

Upon motion duly made and seconded, it was

Resolved, that a meeting of the Board of Directors be held at No. 1775 Broadway, City, County, and State of New York, at eleven o'clock in the forenoon, on the 18th day of April 1936.

594 Upon motion duly made and seconded, the Secretary was directed to file with the records of the company, for the purpose of reference, the following papers;

- (1) List of stockholders entitled to vote at this meeting.
- (2) Proxy presented at the meeting.
- (3) Waiver of notice of the meeting.
- (4) Inspector's Oath and Report.

There being no further business, the meeting adjourned.

CHARLES G. POULSTON,
Secretary of the Meeting.

INNISFAIL CORPORATION

ORGANIZED UNDER THE LAWS OF NEW JERSEY

Alphabetical List of Stockholders at Closing of Books on the 21st Day of March 1936

Name and residence	Shares	
	Common	Preferred
M. V. Smith, 1115 Fifth Avenue, New York, N. Y.	33 1/2	---
Gregory B. Smith, 1115 Fifth Avenue, New York, N. Y.	33 1/2	---
Gerard C. Smith, 1115 Fifth Avenue, New York, N. Y.	33 1/2	---

WILLARD DOTY,
Treasurer.

595

INNISFAIL CORPORATION

INSPECTOR'S OATH AND REPORT

STATE OF NEW JERSEY,
County of Hudson, ss.

William Dudley and Henry Hansen, being duly sworn upon their respective oaths, do severally promise and swear that they will faithfully, honestly, and impartially perform the duties of inspectors of election, and will to the best of their skill and ability conduct the election to be held this day for Directors of the above named company, and a true report make of the same.

WILLIAM DUDLEY.
HENRY HANSEN.

Subscribed and sworn to before Me this 15th day of April 1936.

[SEAL]

HARRY W. MEEN,
Notary Public, N. J.

596 CERTIFICATE OF INSPECTORS OF ELECTION OF INNISFAIL CORPORATION

We, the undersigned, Inspectors of Election of Innisfail Corporation, a corporation of the State of New Jersey, hereby certify that at the annual meeting of stockholders of said corporation held this day, the following Directors were duly elected:

Directors	Number of votes
M. V. Smith	99
Gregory B. Smith	99
Gerard C. Smith	99

Witness our hands this 15th day of April 1936.

WILLIAM DUDLEY,
HENRY HANSEN,
(Inspectors of Election.)

INNISFAIL CORPORATION

INCOME STATEMENT—YEAR ENDING DECEMBER 31, 1935

Income:		
Dividends	\$38,291.95	
Interest	9,130.00	
Profit on Sale of Securities	79,882.35	
		\$127,304.30
Expenses:		
Salaries	7,200.00	
Legal Fees	2,400.00	
Taxes	15,513.48	
Sundries	113.57	
		25,227.05
Net Income for Year		\$102,077.25

BALANCE SHEET—DECEMBER 31, 1935

Assets:		
Cash in Banks	\$58,894.91	
Investments	872,903.61	
		\$931,798.52
Liabilities:		
John T. Smith—Current Account	\$92,993.23	
Reserve for Income Taxes	14,718.80	
Capital Stock	10,000.00	
Capital Surplus	863,741.00	
Earned Surplus (Deficit)	*49,654.51	
		\$931,798.52

EARNED SURPLUS ACCOUNT

Deficit—January 1, 1935		*\$60,298.77
Net Income for Year 1935	\$102,077.25	
Less Dividend Paid (Securities Distributed at Cost) 436 shs. Pathe Film Corp. (\$7 Preferred)	\$22,632.90	
8,600 shs. Transcontinental & Western Air, Inc.	68,300.00	
	\$91,432.90	
		\$10,644.26
Deficit—End of Year		*\$49,654.51
(*—In Red Ink.)		

INNISFAIL CORPORATION

WAIVER OF NOTICE OF ANNUAL MEETING OF STOCKHOLDERS—

APRIL 15TH, 1936

We, the undersigned, being all the stockholders of Innisfail Corporation, do hereby waive all notice whatsoever of the annual meeting of stockholders and do hereby agree and consent that the same be held at the office of the Corporation, No. 15 Exchange Place, Jersey City, New Jersey, on the 15th day of April, 1936, at 12:00 o'clock noon, for the election of Directors for the ensuing year and for such

other business as may be deemed advisable by the stockholders present.

Dated April 6th, 1936.

GREGORY B. SMITH.

GERARD C. SMITH.

MAUREEN V. SMITH.

INNISFAIL CORPORATION

PROXY FOR ANNUAL MEETING—APRIL 15, 1936

Know all men by these presents, that we, the undersigned stockholders of Innisfail Corporation, a corporation of New Jersey, do hereby make, constitute, and appoint Alfred F. McCabe our true and lawful agent and attorney for us and in our name, place, and stead and in our behalf to vote any and all shares of the common stock of Innisfail Corporation owned by us or standing in our name, as our proxy, at the annual meeting of the stockholders of said corporation, to be held at its office, No. 15 Exchange Place, Jersey City, New Jersey, on Wednesday the 15th day of April 1936, at 12:00 o'clock noon, or at any adjournment or adjournments thereof, according to the number of votes that we may at such meeting be entitled to cast; hereby granting to our said attorney full power and authority to act for us and in our name at said meeting, or any adjournment thereof, as fully as we could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that our said attorney, or his substitute, may do in the premises.

In witness whereof, we have hereunto set our hands and affixed our seals this 6th day of April 1936.

MAUREEN V. SMITH.

GREGORY B. SMITH.

GERARD C. SMITH.

INNISFAIL CORPORATION

SPECIAL MEETING OF THE BOARD OF DIRECTORS—APRIL 18, 1936

At a special meeting of the Board of Directors of Innisfail Corporation, held at No. 1775 Broadway, in the Borough of Manhattan, City, County, and State of New York, on the 18th day of April 1936, at 9:00 o'clock in the forenoon, the following proceedings were had: The meeting was called to order by Mr. Gerard C. Smith, Secretary of the Corporation, who stated that a quorum was not in attendance, and the meeting was adjourned to the 6th day of June 1936, same to be held at 9:00 o'clock in the forenoon, at Southampton, Suffolk County, Long Island.

GERARD C. SMITH,

Secretary.

INNISFAIL CORPORATION

SPECIAL MEETING OF THE BOARD OF DIRECTORS—JUNE 6TH, 1936

At a special meeting of the Board of Directors of Innisfail Corporation, held at Ox Pasture Road, Southampton, Suffolk County, New York, on the 6th day of June 1936, at 9:00 o'clock in the forenoon, the following proceedings were had:

There were present: G. B. Smith, G. C. Smith, M. V. Smith, being all the members of the Board.

Mr. G. B. Smith presided, and Mr. G. C. Smith recorded.

The Chairman stated that at the annual meeting of the stockholders of the Corporation held at the principal office of the Corporation, No. 15 Exchange Place, Jersey City, New Jersey, on the 15th day of April 1936, G. B. Smith, G. C. Smith, and M. V. Smith had been elected directors of the Corporation.

The Chairman stated that the purpose of the meeting was to elect officers for the ensuing year.

Upon motion duly made, seconded, and unanimously carried, the following were elected officers for the ensuing year: President, Gerard C. Smith; Vice President, Maureen V. Smith; Secretary, Gregory B. Smith; Asst. Secretary, E. J. McCabe; Treasurer, Willard Doty.

Upon motion duly made, seconded, and unanimously carried, it was

Resolved that the following salaries be paid to the following persons for the ensuing year: President, \$2,400; Vice President, \$2,400; Secretary, \$2,400; Asst. Secretary, \$1,200.

There being no further business, it was voted to adjourn.

GREGORY B. SMITH,
Secretary.

Approved:

GERARD C. SMITH.

GREGORY B. SMITH.

MAUREEN V. SMITH.

INNISFAIL CORPORATION

SPECIAL MEETING OF THE BOARD OF DIRECTORS—JULY 31ST, 1936

At a special meeting of the Board of Directors of Innisfail Corporation, held at Ox Pasture Road, Southampton, Suffolk County, New York, on the 31st day of July 1936, at 11:00 o'clock in the forenoon, the following proceedings were had:

There were present: G. B. Smith, G. C. Smith, M. V. Smith, being all the members of the Board.

The President of the corporation, G. C. Smith, presided and the Secretary of the corporation, G. B. Smith, recorded.

The minutes of the meeting of the Board of Directors held June 6th, 1936, were read and approved.

The Chairman stated that the corporation had made the following sales:

February 24th, 1936—700 shares of the capital stock of Chrysler Corporation at \$98.50 per share, which netted the corporation \$68,778.87.

July 3rd, 1936—40 shares each of the capital stock of Certosa Corporation at \$150 per share to G. C. Smith, G. B. Smith, and M. V. Smith, netting the corporation \$18,000.

Upon motion duly made, seconded, and unanimously carried, it was

Resolved that the action of the officers in selling 700 shares of the stock of Chrysler Corporation at \$98.50 per share, and 120 shares of the capital stock of Certosa Corporation at \$150 per share, be and the same hereby is approved, ratified, and confirmed.

The Chairman stated that on July 27th, 1936, the corporation had subscribed to 1,992 shares of the stock of Grand National Film, Inc., and paid therefor the sum of \$3,486.00.

Upon motion duly made, seconded, and unanimously carried, it was

Resolved that the action of the officers in subscribing to 1,992 shares of the capital stock of Grand National Film, Inc., at \$3,486.00, be and the same hereby is approved, ratified, and confirmed.

The Chairman stated that on April 13th, 1936, the corporation had advanced to Certosa Corporation, the sum of \$5,000, and that on July 13th, 1936, the corporation had advanced to Certosa Corporation, the sum of \$100,000.00.

Upon motion duly made, seconded, and unanimously carried, it was


Resolved that the action of the officers in advancing to Certosa Corporation the sum of \$105,000.00, be and the same hereby is approved, ratified, and confirmed.

The Chairman stated that on July 2nd, 1936, the corporation had loaned to Gregory B. Smith 1,000 shares of the \$5 par value Common Stock of Chrysler Corporation, and submitted to the meeting a loan agreement covering the same.

Upon motion duly made, seconded, and unanimously carried, it was

Resolved that the action of the officers of the corporation in loaning to Gregory B. Smith 1,000 shares of the \$5 par value Common Stock of Chrysler Corporation, pursuant to the agreement dated July 2nd, 1936, between Gregory B. Smith and the corporation, be and the same hereby is approved, ratified, and confirmed.

The Chairman stated that on July 7th, 1936, the corporation had loaned to Gerard C. Smith 1,000 shares of the \$5 par value Common Stock of Chrysler Corporation, and submitted to the meeting a loan agreement covering the same.



Upon motion duly made, seconded, and unanimously carried, it

was

Resolved that the action of the officers of the corporation in loaning to Gerard C. Smith 1,000 shares of the \$5 par value Common Stock of Chrysler Corporation, pursuant to the agreement dated July 7th, 1936, between Gerard C. Smith and the corporation, be and the same hereby is approved, ratified, and confirmed.

The Chairman stated that on July 14th, 1936, the corporation had loaned to Maureen V. Smith 1,000 shares of the \$5 par value Common Stock of Chrysler Corporation and submitted to the meeting a loan agreement covering the same.

Upon motion duly made, seconded, and unanimously carried, it

was

Resolved that the action of the officers of the corporation in loaning to Maureen V. Smith 1,000 shares of the \$5 par value Common Stock of Chrysler Corporation, pursuant to the agreement dated July 14th, 1936, between Maureen V. Smith and the corporation, be and the same hereby is approved, ratified, and confirmed.

Upon motion duly made, seconded, and unanimously carried, it

was

Resolved that a special dividend is hereby declared on the capital stock of the corporation of 18,324 shares of the Common Stock of National Baking Company, being at the rate of 183.24 shares of the Common Stock of National Baking Company on each share of the stock of this corporation, to be paid August 1st, 1936, to stockholders of record of the corporation at the close of business on July 31st, 1936.

After a general discussion in regard to the business and affairs of the corporation, the meeting adjourned.

GREGORY B. SMITH, *Secretary*.

Approved:

GERARD C. SMITH.

MAUREEN V. SMITH.

GREGORY B. SMITH.

INNISFAIL CORPORATION

WAIVER OF NOTICE OF SPECIAL MEETING OF BOARD OF DIRECTORS

We, the undersigned, being all the Directors of Innisfail Corporation, do hereby waive all notice whatever of a special meeting of the Board of Directors of Innisfail Corporation to consider the advisability of declaring a dividend, and do hereby agree and consent that the same be held at number 1115 Fifth Avenue, Borough of Manhattan, City of New York, on the 26th day of November 1936, at two o'clock in the afternoon, and that any and all lawful business

may be transacted at said meeting as may be deemed advisable by the Directors present thereat.

Dated New York City, November 26, 1936.

GREGORY B. SMITH.
GERARD C. SMITH.
MAUREEN S. SHANLEY.

606

INNISFAIL CORPORATION

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS
NOVEMBER 26, 1936

At a special meeting of the Board of Directors of Innisfail Corporation, held at number 1115 Fifth Avenue, Borough of Manhattan, City, County, and State of New York, on the 26th day of November 1936, at two o'clock in the afternoon, pursuant to Waiver of Notice, the following proceedings were had:

There were present: G. B. Smith, G. C. Smith, Maureen S. Shanley, being all the members of the Board.

The President of the corporation, G. C. Smith, presided and the Secretary of the corporation, G. B. Smith, recorded.

The minutes of the meeting of the Board of Directors held July 31, 1936, were read and approved.

A report by the Treasurer of the corporation, with respect to the financial condition of the corporation, and the income and profits of the corporation for the period commencing January 1, 1936, and ending November 10, 1936, as well as a forecast of the income and profits for the balance of the year 1936 was presented to the meeting.

After discussion and upon motion duly made and seconded, it was unanimously

Resolved, that out of the surplus or net profits of the corporation, a dividend of \$1,500 a share be, and is hereby, declared on the common stock of this corporation, payable December 24, 1936, to the holders of record of said stock at the close of business December 23, 1936.

607 The resignation of Maureen S. Shanley, as Vice President of the corporation was presented at the meeting and accepted and ordered on file.

Upon motion duly made and seconded, Bernard M. Shanley, 3d, was elected Vice President of the corporation at the salary authorized to be paid to the Vice President at the meeting of the Directors held on June 6, 1936.

The resignation of Maureen S. Shanley, as a Director of the corporation, was presented at the meeting and accepted and ordered on file.

Upon motion duly made and seconded Bernard M. Shanley, 3d, was elected a Director in place of Maureen S. Shanley, resigned, and Bernard M. Shanley, 3d, thereupon entered the meeting.

After a general discussion in regard to the business and affairs of the corporation, the meeting adjourned.

GREGORY B. SMITH,
Secretary.

Approved:

GREGORY B. SMITH.
GERARD C. SMITH.
MAUREEN S. SHANLEY.

NOVEMBER 26, 1936.

INNISFAIL CORPORATION,

1775 Broadway, New York City, N. Y.

DEAR SIR: I hereby resign as Vice President of your corporation, my resignation to take effect upon acceptance by you.

Yours very truly,

MAUREEN S. SHANLEY.

NOVEMBER 26, 1936.

INNISFAIL CORPORATION,

1775 Broadway, New York City, N. Y.

DEAR SIR: I hereby resign as a Director of your corporation, my resignation to take effect upon acceptance by you.

Yours very truly,

MAUREEN S. SHANLEY.

INNISFAIL CORPORATION

WAIVER OF NOTICE OF ANNUAL MEETING OF STOCKHOLDERS—

APRIL 21, 1937

We, the undersigned, being all the stockholders of Innisfail Corporation, do hereby waive all notice whatsoever of the annual meeting of stockholders and do hereby agree and consent that the same be held at the office of the Corporation, No. 15 Exchange Place, Jersey City, New Jersey, on the 21st day of April 1937, at 12:00 o'clock noon, for the election of Directors for the ensuing year and for such other business as may be deemed advisable by the stockholders present.

Dated April 12, 1937.

GREGORY B. SMITH.
MAUREEN S. SHANLEY.
BERNARD M. SHANLEY, III.
GERARD C. SMITH.

OFFICERS AND DIRECTORS OF INNISFAIL CORPORATION

Directors elected at annual meeting of stockholders held April 15th, 1936: M. V. Smith, Gregory B. Smith, Gerard C. Smith.

Officers elected at special meeting of Board of Directors held June 6th, 1936: Gerard C. Smith, President; Maureen V. Smith, Vice President; Gregory B. Smith, Secretary; E. J. McCabe, Asst. Secretary; Willard Doty, Treasurer.

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PLAINTIFFS' EXHIBIT 21

JOHN THOMAS SMITH,

1775 BROADWAY,

New York, N. Y., December 22, 1934.

MEMORANDUM OF SALE

I have this day sold to Maureen V. Smith, 1115 Fifth Avenue, New York, N. Y., thirty-three and one-third ($33\frac{1}{3}$) shares of the capital stock of Innisfail Corporation for the sum of \$119,110.29.

JOHN THOMAS SMITH

JOHN THOMAS SMITH,

1775 BROADWAY,

New York, N. Y., December 22, 1934.

MEMORANDUM OF SALE

I have this day sold to Gerard C. Smith, 1115 Fifth Avenue, New York, N. Y., thirty-three and one-third ($33\frac{1}{3}$) shares of the capital stock of Innisfail Corporation for the sum of \$119,110.29.

JOHN THOMAS SMITH

611

JOHN THOMAS SMITH,

1775 BROADWAY,

New York, N. Y., December 22, 1934.

MEMORANDUM OF SALE

I have this day sold to Gregory B. Smith, 1115 Fifth Avenue, New York, N. Y., thirty-three and one-third ($33\frac{1}{3}$) shares of the capital stock of Innisfail Corporation for the sum of \$119,110.29.

JOHN THOMAS SMITH

612

PLAINTIFF'S EXHIBIT 22

Certified copy of gift tax return of John Thomas Smith for 1934.

(PHOTOPRINTS)

[For the Convenience of Court and Counsel this Exhibit (Photostatic Copies) is Bound in on the Opposite Page.]

United States



of America

TREASURY DEPARTMENT
WASHINGTON

January 17, 1936.

IN ACCORDANCE to the provisions of Section 661, Chapter 17, Title 28 of the
United States Code (Section 882 of the Revised Statutes of the United States),
I hereby certify that the annexed is a true copy of the gift tax return, Form
709, with attached schedules, of John Thomas Smith, Ox Pasture Road, Newington,
New York, for the year 1934.

on this Department.

EX-22
U.S. DIST. COURT
S.D. N.Y.
MAR 23 1936

IN WITNESS WHEREOF, I have hereunto set my hand,
and caused the seal of the Treasury Department to be
affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

[Signature]

Act. Chief Clerk, Treasury Department



State of California
San Francisco

Name of donor JOHN THOMAS SMITH
Address of donor CLAYTON ROAD, SOUTHAMPTON, N.Y.
Citizenship AMERICAN
Residence of donor CLAYTON ROAD, SOUTHAMPTON, N.Y.

1-2
361 15115.30
361 15115.30
361 15115.30

Have you (the donor) during the calendar year indicated above, without an adequate and substantiated in money or money's worth, made any transfer exceeding \$5,000 in value for the purpose of giving it a present interest? (Answer "Yes" or "No.")
1. By the making of an assignment over to the benefit of a charity or other institution? No
2. By making a bequest of an interest in real property? No
3. By making a bequest of an interest in personal property? No
4. By making a bequest of an interest in real property? No
5. By making a bequest of an interest in personal property? No
6. By making a bequest of an interest in real property? No
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97. By making a bequest of an interest in personal property? No
98. By making a bequest of an interest in real property? No
99. By making a bequest of an interest in personal property? No
100. By making a bequest of an interest in real property? No

COMPUTATION OF AMOUNT OF NET GIFTS FOR YEAR

1. Amount of gifts for year other than charitable, etc., gifts (Item 1, schedule A)	2546,845.23
2. Amount of charitable, public, and similar gifts for year (Item 1, schedule B)	
3. Total amount of gifts for year (Item 1 plus Item 2)	2,546,845.23
4. Amount of charitable, public, and similar gifts for year (Item 1, schedule B)	
5. Specific exemption claimed (not exceeding \$5,000 less total amount of specific exemption claimed for preceding years)	50,000.00
6. Total deductions (Item 4 plus Item 5)	50,000.00
7. Amount of net gifts for year (Item 3 minus Item 6)	2,496,845.23

COMPUTATION OF TAX

1. Amount of net gifts for year (Item 7, above)	2,496,845.23
2. Total amount of net gifts for preceding years (Item 1, schedule C)	
3. Total net gifts (Item 1 plus Item 2)	2,496,845.23
4. Tax computed on Item 3	35,325.30
5. Tax computed on Item 2	
6. Tax on net gifts for year (Item 4 minus Item 5)	35,325.30

AFFIDAVIT

I swear for affirm that this return, including the accompanying schedule and statements, if any, has been examined by me, and to the best of my knowledge and belief, is a true, correct, and complete return for the calendar year stated, pursuant to the Gift Tax Act of 1930 as amended, and the regulations issued thereunder, and no transfer required by said law and regulations to be returned other than the transfer of transfers disclosed herein under schedule A or B was made by me (the donor) during said calendar year.

Sworn to and subscribed before me this 11th

NOTARIAL
SEAL

day of MARCH 1935

[Signature]
Signature of donor

AFFIDAVIT

I swear for affirm that I prepared this return for the person named herein and that this return, including the accompanying schedule and statements, if any, is a true, correct, and complete statement of all the information respecting the donor's gift tax liability of which I have any knowledge.

Sworn to and subscribed before me this 11th

NOTARIAL
SEAL

day of MARCH 1935

[Signature]
Signature of person preparing return

DEBAIL CORPORATION

DECEMBER-22-1934.

STATEMENT OF NET WORTH

ASSETS

Cash in Bank	\$16,670.66
Mortgage Investment	130,000.00

	Unit	Value	
Investment Subscriptions			
16,114 Shs. American Consolidated Mining Co.	2.00	\$32,432.00	
1,000 "	155.23	155,230.00	
2,477 "	36.50	324,364.50	
1,000 "	7.0425	7,042.50	
" "	25.00	250.00	
1,184 "	2.10	25,432.00	
51 "	80.00	2,480.00	
500 "	24.0625	12,031.25	
500 "	15.6875	7,843.75	
332 "	10.00	3,320.00	
1,527 "	8.07	12,532.01	
18,324 "	1.00	18,324.00	
800 "	21.50	25,200.00	
1,400 "	13.75	19,250.00	
134 "	70.00	30,520.00	
30,000 "	100.25	38,095.00	
28,000 "	2.47	69,160.00	
442 "	1.00	442.00	
105 "	.01	1.05	
			785,204.56

Accrued Interest	384.10	
Pathe Exchange, Inc. 7% Bonds	7,561.00	7,945.84
Mortgage Investment		

Premium on value of 28,000 shs. Siscoe Gold Mines, Ltd.	846.38
Canadian Funds at 15/16 Prem.	936,649.44

LIABILITIES

John T. Smith, Current Account	19,824.00
Reserve for 1934 Federal Income Tax	20,693.34
	<u>\$409,176.10</u>

NET WORTH

*See attached statement of basis of valuation.

COMPUTATION OF GIFT

Net Worth of Capital Stock	919,176.10
Consideration for sale of capital stock	357,330.87
Less Net worth-Representing Gift	<u>561,845.23</u>

INNISFAIL CORPORATION

BASIS OF VALUATION OF SECURITIES

DECEMBER-22-1934

SECURITY	SOURCE OF QUOTATION	HIGH	LOW	* UNIT VALUE
Argonaut Consolidated Mining Co.	Not listed-Recent sales	---	---	2.00
Aldebaran Corporation	" -Net Worth- at market values	---	---	155.23
Chrysler Corporation	N.Y. Stock Exchange	38 1/8	38 1/8	38.50
Columbia Gas & Elec. Corp. Common	" 7 1/8	7 1/8	7 1/8	7.0625
" 5% Preferred	N.Y. Curb	65	65	65.00
Canadian Corp. Ltd. Ord. Stock	Not listed-Letter from Company	(1) 1.73	2.47	2.10
" " " Pfd. "	" " "	Nominal		80.00
Electric Auto Lite Company	N.Y. Stock Exchange	26 1/8	26	26.0625
Firestone Tire & Rubber Company	" 18 7/8	18 7/8	15 1/2	15.6875
Gaynor Electric Company, Inc.	Not listed	Nominal		10.00
Invested Corporation	" -Net Worth at market values	---	---	8.07
National Baking Co.	N.Y. Curb - Last sale 1934 was 7/8	---	---	1.00
National Sugar Refining Co.	N.Y. Curb	(1) 30	33	31.50
Patho Exchange, Inc. Pfd. "A" Stock	N.Y. Stock Exchange	13 1/2	13 1/2	13.75
" " " 5% Pfd. "	Not listed-Nominal Market	---	---	70.00
" " " 7% Bonds 1937	N.Y. Stock Exchange-Last sale 12/21/34	---	---	100.25
Siscoe Gold Mines, Ltd.	Toronto Market	(2) 2.47	2.47	2.47
White Knob Copper & Dev. Co. Pfd.	Not listed-Recent sales	---	---	1.00
" " " " " Com.	" " No market	---	---	.01

* Where sales were made at this date Unit Value is the mean of the high and low for the day.

(1) Represents bid and asked prices.

(2) Quotation is in Canadian Funds.

TRANSCRIPT OF ACCOUNT WITH INNISFAIL CORPORATION ON BOOKS OF JOHN THOMAS SMITH

Cr. 19,857.75
19,857.75

1926
June 30
Oct.

Dr.

1926
June 15 Miscellaneous disbursements covering cost
of Incorporating, C338
21 Federal & State Transfer Tax Stamps, C340
23 Minute Book & Seals, C340
July 7 Stock Certificate and Stock Ledger, C342

1927		
Mar. 15	Cash, C389.	
Mar. 15	Cash, C402.	
June 15	Cash, C410.	
Aug. 2	Cash, C410.	
- 15	Purchase of 15 shs. White Knob Copper & Development Co. Pfd. C410.	
31	Purchase of 500 shs. White Knob Copper & Development Co. Pfd. J31.	
	Purchase of 500 shs. Argonaut Consolidated Mining Co. J31.	
	Petty Cash Disbursements, J31.	
Sept. 15	Cash, C414.	
Dec. 2	Cash, C425.	
5	Purchase of 500 shs. Gillette Safety Razor Co., J34.	
14	Cash, C427.	
21	Purchase of 1,700 shs. Gimbel Bros., J34.	
31	Petty Cash Disbursements, J34.	

1927							
Jan.	3	Dividend on 26,477 shs.	Chrysler,	C375-			
Mar.	31	"	"	C385			
June	30	"	"	C389-			
Sept.	30	"	"	C413			
Dec.	23	Cash,	C424				
	31	Balance—Carried Down.					

19,857.75
19,857.75
19,857.75
19,857.75
20,000.00
67,134.06

206, 280, 56

206, 280. 56

1928	Balance—Brought Down	
Jan. 4	Cash, C431	
Jan. 30	Purchase 100 shs. White Knob Copper & Development Co. Pfd. J40	
June 30	Petty Cash Sundries, J40	

1928	Dividend on 26,477 shs.	Chrysler, C430
Jan. 3	" " 300 "	Gillette Safety Razor, C440
Mar. 1	" " 26,477 "	Chrysler, C444
Apr. 5	" " 4 "	" " C462
July 2	" " 4 "	" " C462

19,857.75
375.00
19,857.75
19,857.75

TRANSCRIPT OF ACCOUNT WITH INNISFAIR CORPORATION ON BOOKS OF JOHN THOMAS SMITH—continued.

		Dr.	Cr.
1928			
July 19	Subscription to 4,412 Shares New Chrysler C465	253,690.00	13.75
Aug. 31	Cash, C471	20,000.00	23,166.75
Sept. 30	Transfer taxes on 5,400 shs. Argonaut Consolidated Mining Co. purchased 8/29, J42	10.80	14,916.12
	Petty Cash Sundries, J42	20	
Dec. 28	Purchase 500 shs. Argonaut Consolidated Mining Co., C491	350.00	875.00
31	Petty Cash Sundries, J53	70,000.00	312,066.51
	Dividend declared by the Corporation, J54		
		411,586.38	411,586.38
1929			
Jan. 1	Balance Brought Down	312,666.51	108.50
Apr. 12	Purchase of 5,000 shs. Ecuadorian Corporation, J68	15,171.87	58.90
May 31	Audit Fee, J68	200.00	23,166.75
June 30	Purchase of 2,620 Ecuadorian Corporation 6% Debentures		23,166.75
	" " 589 shs. Ecuadorian Corporation stock, J69		14.00
	" " 50 Quito Electric Light & Power Co., Common	1,825.00	40.00
	" " 10 Quito Electric Light & Power Co., Pfd.		200.00
	" " 4,990 shs. Ecuadorian Corporation, C515	15,106.45	23,166.75
Oct. 28	New Jersey Franchise Tax, J74	10.00	
Dec. 28	Purchase of 1,000 shs. Aldebaran Corporation, J82	160,800.00	300.00
			5,000.00
			100,000.00
			750.00
			23,166.75
1928			
July 20	Proceeds of Sale of Chrysler Rights, J41		
Sept. 29	Dividend on 30,889 shs. Chrysler, C476		
Oct. 27	Mardian Corp.—Menthol Crystal Account, C478		
Dec. 19	Dividend on 500 shs. Bondshares Fiscal Corp., C486		
31	Balance—Carried Down, C486		
1929			
Jan. 2	Dividend on 31 shs. Ecuadorian Corp. Preferred, C494		
	" " 1,178 " Ecuadorian Corp. Ord. Stock, C494		
Mar. 30	" " 30,889 " Chrysler, C494		
May 16	" " " " C500		
	" " 10 " Quito Elec. Light & Power Pfd., J69		
	" " 50 " Quito Elec. Light & Power, Common, J69		
June 30	Redemption of 10 shs. Quito Elec. Light & Power, Pfd., C510		
	Dividend on 30,889 shs. Chrysler, C514		
July 2	Dividend on 5,000 shs. Ecuadorian Corp. Ord. Stock, C516		
	17 Cash, C518		
	23 Cash, C518		
	25 Redemption of 50 shs. Quito Electric Light & Power Corp., Common, C518		
Sept. 20	Dividend on 30,889 shs. Chrysler, C532		

145,596.00
267,453.00
612,188.01

Dec. '6 Sale of 4,412
37 Balance Carried Down

106,400.00
8 18
612,188.01

615 1930

Jan. 1 Balance Brought Down
Nov. 30 Petty Cash Disbursements, J104
Dec. 31 Balance—Carried Down

1930

Jan. 2 Dividend on 30,889 shs. Chrysler, C1
Apr. 1 " " 26,477 " Hudson Motors, C17
July 1 " " 26,477 " Chrysler, C35
2 " " 1,900 " Hudson Motors, C35
Sept. 30 " " 26,477 " Chrysler, C43
Oct. 2 Sale of 10,000 " Chrysler, J100
2 Dividend on 1,900 " Hudson Motors, C45
Nov. 10 Cash, C51

289,915.00

289,915.00

1931

Oct. 31 Petty Cash Disbursements, J129
Nov. 2 New Jersey Franchise Tax, J130
Dec. 31 Balance—Carried Down

1931

Jan. 1 Balance—Brought Down
2 Dividend on 16,477 shs. Chrysler, C65
3 " " 1,900 " Hudson Motors, C65
Mar. 31 " " 16,477 " Chrysler, C83
Apr. 3 " " 1,900 " Hudson Motors, C85
July 1 " " 16,477 " Chrysler, C113
" " 1,900 " Hudson Motors, C113
Sept. 30 " " 16,477 " Chrysler, C129
Oct. 1 " " 1,900 " Hudson Motors, C133

41,787.45

41,787.45

22,460.45
4,119.25
1,425.00
4,119.25
475.00
4,119.25
475.00
4,119.25
475.00

TRANSCRIPT OF ACCOUNT WITH INNISFAIR CORPORATION ON BOOKS OF JOHN THOMAS SMITH—continued

		1932		1933		1934	
		Dr.	Cr.				
1932							
Jan. 5	Cash to cover Chrysler Dividend 1/4/32, C152 (a)	4, 119.25	1 Balance—Brought Down	Jan. 1			47,777.18
Feb. 10	Audit Fee, C158	200.00	4 Dividend on 16,477 sha. Chrysler, C151 (a)	2			4, 119.25
Dec. 29	Purchase of 18,324 sha. National Baking, J157	18,324.00	1,900 " Hudson Motors, C151 (a)				475.00
	" " 332 " Gaynor Electric Co., J157	3,320.00	Cash, C177	May 25			10,000.00
	" " 1,553 " Investrad Corporation, J157	6,879.80	Sept. 14 Payment for purchase of 900 sha. New Haven for account of John T. Smith, J150	Sept. 14			16,312.50
	" " 500 " Firestone Tire, J158	6,500.00					
	" " 500 " Electric Auto Lite, J158	9,000.00					
	" " 800 " National Sugar Refining, J159	16,900.00					
	Cash to Balance Account, C226	7,440.88					
		72,683.93					72,683.93
1933							
Apr. 3	Advance on account of participating in Young, Kolbe & Co. Syndicate, C244 (b)	50,000.00	June 15 Repayment of advance of 4/3/33, C255 (b)	June 15			50,000.00
Dec. 29	Cash, on account of advance of 7/21/33, C294	50,000.00	July 31 Cash, C259	July 31			80,000.00
31	Balance—Carried Down	55,211.92	Sept. 28 C273	Sept. 28			25,000.00
			Dec. 30 Refund from Chrysler Corporation of 5% tax on dividend on 8,477 shares owned by Innisfair Corporation, C291	Dec. 30			
							211.92
		155,211.92					155,211.92
1934							
May 31	Petty Cash Sundries, J170	9.89	Jan. 1 Balance—Brought Down	Jan. 1			55,211.92
Oct. 15	Purchase of 28,000 shares Siscoe Gold Mine, Ltd., C344	74,918.90	May 31 To adjust error in refund of Chrysler Dividend Tax, J177	May 31			3.01
18	Bank charges re purchase of Siscoe Stock, C446	100.00	Dec. 31 Balance—Carried Down	Dec. 31			24,191.00
		7.83					

Dec. 31 Purchase of 3,932 shares Preferred Stock
White Knob Copper & Development Co.
J184
31 Petty Cash Sundries, J183

4,364.78
↓
53

79,402.93

1935

Jan. 1 Balance—Brought Down.
Apr. 15 Purchase of 8,600 shares Transcontinental
& Western Air, Inc., C378
June 30 Petty Cash Sundries, J195
Dec. 4 Advance—Account of purchase of 10,000
sha. White Knob Copper & Development
Co., Common Stock, C428 (c)

24,191.00

68,300.00

2.23

750.00

93,743.23

1936

Jan. 1 Balance—Brought Down.
Mar. 31 Receipt in error of dividend of \$1.00
on 700 sha. Chrysler, J212
Dec. 28 Advance, C514
29 " " C515

92,993.23

240.00

58,556.24

140,000.00

199,256.24

1937

Jan. 1 Balance—Brought Down.
Aug. 10 Payment for 3,972 shares General Motors
Securities "A," C561
Oct. 18 On Account, C573
19 " " C573
19 " " J239
Nov. 24 Balance Due, C583

198,556.24

231,865.50

25,000.00

3,000.00

25,000.00

99,000.00

152,000.00

79,402.93

1935

Dec. 10 Repayment of advance of 12/4/35, C425 (c)
31 Balance—Carried Down

750.00

92,993.23

93,743.23

1936

Feb. 27 Cash to Balance Account, C443
Apr. 2 C453
Dec. 31 Balance—Carried Down

92,993.23

700.00

198,556.24

199,256.24

1937

July 13 On account, J234
Aug. 10 Sale of 3,972 shares of General Motors Se-
curities "A," J237
12 On account, C558
16 " " C560
Sept. 22 Advance, J238
Oct. 11 " " J238

45,000.00

231,865.00

110,000.00

43,556.24

102,000.00

50,000.00

152,000.00

PLAINTIFFS' EXHIBIT 24A

No. ———. Mr. John T. Smith, 1775 Broadway, New York, N.Y. 1

	Date	Cancelled	Issued	Balance	Trans.	Certificate
1	7-18-22		*100		WI	C1401
2	"		*100		WI	C1402
3	"		*100		WI	C1403
4	"		*100		WI	C1404
5	"		*100		WI	C1405
6	"		*100		WI	C1406
7	"		*100		WI	C1407
8	"		*100		WI	C1408
9	"		*100		WI	C1409
10	"		*100		WI	C1410
11	Feb. 18, '27 50% stk. div.		*500	*1,500	WI	J4057
12	1-3-33		*100		WI	D32741
13	1-3-33		*17	*1,617	WI	D32742
14	9-13-35	*100			WC	C1401
15	9-13-35	*100			WC	C1402
16	9-13-35	*100			WC	C1403
17	9-13-35	*100			WC	C1404
18	9-13-35	*100			WC	C1405
19	9-13-35	*100			WC	C1406
20	9-13-35	*100			WC	C1407
21	9-13-35	*100			WC	C1408
22	9-13-35	*100			WC	C1409
23	9-13-35	*100			WC	C1410
24	9-13-35	*100			WC	J4056
25	9-13-35	*100			WC	D32741
26	9-13-35	*100			WC	D32742
27	9-13-35	*100			WI	C1401
28	9-13-35	*100			WI	C1402
29	9-13-35	*100			WI	C1403
30	9-13-35	*100			WI	C1404
31	9-13-35	*100		*500	WI	C1405

Standard Oil Company (Indiana) Capital Stock Record.

No. 2. Mr. John T. Smith, 1775 Broadway, New York, N.Y. 1

	Date	Cancelled	Issued	Balance	Trans.	Certificate
1	9-13-35	Brought forward		*500		
2	9-13-35		*100		WI	C1401
3	9-13-35		*100		WI	C1402
4	9-13-35		*100		WI	C1403
5	9-13-35		*100		WI	C1404
6	9-13-35		*100		WI	C1405
7	9-13-35		*100		WI	C1406
8	9-13-35		*100		WI	C1407
9	9-13-35		*100		WI	C1408
10	9-13-35		*100		WI	C1409
11	9-13-35		*100		WI	C1410
12	9-13-35		*100		WI	C1401
13	9-13-35		*17	*1,617	WI	C1402

Standard Oil Company (Indiana) Capital Stock Record.

620 No. ———. Mary A. Smith, 1115 Fifth Ave., New York, N.Y.

	Date	Cancelled	Issued	Balance	Trans.	Certificate
1	11-30-29		*100		WI	Q45518
2	11-30-29		*16		WI	Q45519
3	12-19-29		*1	*117	WI	D158374
4	1-3-33	*100			WC	Q45518
5	1-3-33	*16			WC	Q45519
6	1-3-33	*1		*0	WC	D158374

Standard Oil Company (Indiana) Capital Stock Record.

STANDARD OIL COMPANY STOCK TRANSFER JOURNAL CONTROL SHEET

Certificates cancelled	Certificate number	Whole	Certificates issued	Certificate number	Whole
Mary A. Smith	G45510 G45511 D158374	100 16 1	John T. Smith, 1775 Broadway, New York, N. Y.	D327471 72	100 17

Total Debits, 13 598. Jed. Total Credits, 10 618 R. W.
Date Jan. 3, 1933. Folio 12. Journal 1.

621

PLAINTIFFS' EXHIBIT 25

NEW YORK, *January 5, 1932.* No. 6492.

CHEMICAL BANK & TRUST COMPANY 1-12

NEW YORK

Pay to the order of Innisfail Corporation \$4,119.25. The sum of \$4,119 and 25 cts. Dollars.

J. T. SMITH.

Perforated stamp—1-6-32. (On left side of check) John Thomas Smith, 1775 Broadway, New York, N. Y. Endorsements as follows: (Rubber stamp of receiving bank.)

622

PLAINTIFFS' EXHIBIT 26

INNISFAIL CORPORATION 40

NEW YORK, *May 25, 1932.* No. 563.

Pay to the order of Chemical Bank & Trust Company, Account of John T. Smith, \$10,000.00. The sum of \$10,000 and 00 cts. Dollars. Payable Through New York Clearing House.

INNISFAIL CORPORATION,
J. T. SMITH, *Pres.*

To The New York Trust Company, Fortieth Street and Madison Avenue, New York.

1-114. Perforated stamp—1-114. 5-26-32C. Endorsements as follows: (Rubber stamps of receiving and collecting banks.)

623

PLAINTIFFS' EXHIBIT 27

INNISFAIL CORPORATION 40

NEW YORK, *September 14, 1932.* No. 567.

Pay to the order of Appenzellar, Allen & Hill, \$16,312.50. The sum of \$16,312 and 50 cts. Dollars. Payable Through New York Clearing House.

INNISFAIL CORPORATION,
J. T. SMITH, *Pres.*

To The New York Trust Company, Fortieth Street and Madison Avenue, New York.

1-114. Perforated stamp—1-114. 9-15-32L.

Certified stamp—Certified Sep. 14, 1932, payable through The New York Clearing House, The New York Trust Company (name illegible), Asst. Treas.

Endorsements as follows:

Pay to the order of Chemical Bank & Trust Co., Appenzeller Allen & Hill.

(Rubber stamp of receiving bank.)

624

PLAINTIFFS' EXHIBIT 28

CHEMICAL BANK & TRUST COMPANY. 1-12. 8.

NEW YORK, COLUMBUS CIRCLE OFFICE, GENERAL MOTORS BUILDING,
57TH STREET AT 8TH AVENUE

NEW YORK, November 2, 1931. No. 265.

Pay to the order of State Tax Commissioner, State of New Jersey,
\$10.00. The sum of \$10 and 00 cts. Dollars.

JOHN T. SMITH, *Special*,
By H. M. HOGAN, *Attorney*.

Perforated stamp—11-6-31 E.

Endorsements as follows:

For Deposit to the credit of State Tax Department, J. H. Thayer
Martin, State Tax Commissioner, Corporation Tax Division.
(Rubber stamps of receiving and collecting banks.)

625

PLAINTIFFS' EXHIBIT 29

INNISFAIL CORPORATION 40

NEW YORK, November 10, 1930. No. 537.

Pay to the order of Chemical Bank & Trust Company, Account
of John T. Smith \$6,000.00 The sum of \$6,000 and 00 cts Dollars
Payable Through New York Clearing House.

INNISFAIL CORPORATION,
J. T. SMITH, *Pres.*

TO THE NEW YORK TRUST COMPANY,

Fortieth Street and Madison Avenue, New York.

1-114

Certified stamp—Certified Nov. 10, 1930; payable through The
New York Clearing House, The New York Trust Company (name
illegible).

Perforated stamp—1-114 11-11-30A.

Endorsements as follows:

Credited to the account of the within named payee, Chemical
Bank & Trust Company, Block Teller.

(Rubber stamp of receiving bank.)

PLAINTIFFS' EXHIBIT 30

1-104

UNITED STATES MORTGAGE & TRUST COMPANY, 55 CEDAR STREET

NEW YORK, *June 26th, 1929* No. 4918

Pay to the order of Norton, Inc. The sum of \$15,136 and 72 cts Dollars.

\$15,136.72. (Safe Deposit Vaults.)

J. T. SMITH.

Perforated stamp—Paid 6-28-29.

Endorsements as follows:

Pay to the order of The Guaranty Trust Co. of New York, Norton, Inc.

(Rubber stamp of receiving bank.)

627

PLAINTIFFS' EXHIBIT 31

INNISFAIL CORPORATION 40

NEW YORK, *July 17th, 1929* No. 510.

Pay to the order of Chemical Bank & Trust Company, Account of John T. Smith \$5,000.00. The sum of \$5,000 and 00 cts Dollars. Payable Through New York Clearing House.

INNISFAIL CORPORATION,
J. T. SMITH, Pres.

To The New York Trust Company, Fortieth Street and Madison Avenue, New York.

1-114. Perforated stamp—Paid. 7-18-29D. Endorsements as follows: (Rubber stamp of receiving bank.)

628

PLAINTIFFS' EXHIBIT 32

INNISFAIL CORPORATION 40

NEW YORK, *July 23rd, 1929* No. 511

Pay to the order of Chemical Bank & Trust Company, Account of John T. Smith \$100,000.00 The sum of \$100,000 and 00 cts Dollars. Payable Through New York Clearing House.

INNISFAIL CORPORATION,
J. T. SMITH, Pres.

To The New York Trust Company, Fortieth Street and Madison Avenue, New York.

1-114.

Certified stamp—Certified Jul. 23, 1929, payable through The New York Clearing House, The New York Trust Company, R. Hessel.

Perforated stamp—Paid 7-24-29. Endorsements as follows: (Rubber stamp of receiving bank.)

PLAINTIFFS' EXHIBIT 33

1-104

UNITED STATES MORTGAGE & TRUST COMPANY, 55 CEDAR STREET

NEW YORK, August 31st, 1928. No. 4654

Pay to the order of Innisfail Corporation. The sum of \$20,000 and 00 cts. Dollars. Payable Through New York Clearing House.
\$20,000.00. (Safe Deposit Vaults.)

J. T. SMITH

Perforated stamp—Paid 9-1-28.

Endorsements as follows:

For deposit, Innisfail Corporation.

(Rubber stamp of receiving bank.)

PLAINTIFFS' EXHIBIT 34

1-104

UNITED STATES MORTGAGE & TRUST COMPANY, 55 CEDAR STREET

NEW YORK, December 28th, 1928. No. 4774

Pay to the order of Gray & Wilmerding. The sum of \$350 and 00 cts. Dollars. Payable Through New York Clearing House.
\$350.00. (Safe Deposit Vaults.)

J. T. SMITH.

Perforated stamp—Paid 1-4-29.

Endorsements as follows:

Pay to the order of Hanover National Bank, Gray & Wilmerding
(Rubber stamp of receiving bank.)

PLAINTIFFS' EXHIBIT 35

1-104 M

UNITED STATES MORTGAGE & TRUST COMPANY, 55 CEDAR STREET

NEW YORK, June 23rd, 1926. No. 3686

Pay to the order of The Broun-Green Company. The sum of \$12 and 75 cts. Dollars. Payable Through New York Clearing House.
\$12.75. (Safe Deposit Vaults.)

J. T. SMITH.

Perforated stamp—Paid 6-25-26.

Endorsements as follows: Pay to the Order of The Hanover National Bank, New York, The Broun-Green Co., By Terence A. J. Ward, Pres.

(Rubber stamp of receiving bank.)

632

PLAINTIFFS' EXHIBIT 36

1-104 M

UNITED STATES MORTGAGE & TRUST COMPANY, 55 CEDAR STREET

NEW YORK, July 7th, 1926. No. 3706.

Pay to the order of The Broun-Green Company. The sum of \$10 and 50 cts. Dollars. Payable Through New York Clearing House. \$10.50. (Safe Deposit Vaults.)

J. T. SMITH.

Perforated stamp—7-10-26.

Endorsements as follows: Pay to the Order of The Hanover National Bank, New York, The Broun-Green Co., By Terence A. J. Ward, Pres.

(Rubber stamp of receiving bank.)

633

PLAINTIFFS' EXHIBIT 37

1-104

UNITED STATES MORTGAGE & TRUST COMPANY, 55 CEDAR STREET

NEW YORK, August 15th, 1927 No. 4169.

Pay to the order of Bankers Trust Company. The sum of \$11 and 17 cts. Dollars. Payable Through New York Clearing House. \$11.17 (Safe Deposit Vaults.)

J. T. SMITH.

Perforated stamp—Paid 8-16-27.

Endorsements as follows: Customers Securities Department.
(Rubber stamp of receiving bank.)

PLAINTIFFS' EXHIBIT 38

1-229

NEW YORK, August 1st, 1927 No. 5459.

EMPIRE TRUST COMPANY, 120 BROADWAY

Pay to the order of Bankers Trust Company, \$747.00. The sum of \$747 and 00 cts Dollars.

JOHN T. SMITH,
By HENRY M. HOGAN,
Atty.

Perforated stamp—Paid 8-2-27.
(Rubber stamp of receiving bank.)

276

JOSEPH T. HIGGINS VS. JOHN T. SMITH

634

PLAINTIFFS' EXHIBIT 39

GREEN, ELLIS & ANDERSON, 100 BROADWAY, NEW YORK.

Mr. JOHN THOMAS SMITH.

Oct. 28, 1929.

We have this day bought for your account and risk: Quantity 2,000; security General Motors; price, 52; commission, \$350; amount \$104,350.00.

GREEN, ELLIS & ANDERSON.

Figured for payment in New York funds in New York. Please add \$26.08 per day for interest for each day delay beyond 10/29/29.

635

PLAINTIFFS' EXHIBIT 40

CHEMICAL BANK & TRUST COMPANY 1-12

NEW YORK, COLUMBUS CIRCLE OFFICE, GENERAL MOTORS BUILDING, 57TH STREET AT 8TH AVENUE

NEW YORK, October 29th, 1929 No. 3

Pay to the order of Green, Ellis & Anderson \$104,350.00. The sum of \$104,350 and 00 cts Dollars.

JOHN T. SMITH, *Special*.By H. M. HOGAN, *Attorney*.

Certified stamp—Certified Oct. 30, 1929, payable only through N. Y. Clearing House, Chemical Bank & Trust Company, 57th Street at 8th Avenue, Columbus Circle Office.

Endorsements as follows: Pay Chatham Phenix Nat. Bank & Trust Co. A or order A Green, Ellis & Anderson 1549.

(Rubber stamp of receiving bank.)

640

PLAINTIFFS' EXHIBIT 45

COMMON STOCK—NATIONAL BAKING COMPANY

Signature of the person who makes transfer. By virtue of the Bill of Sale and the Power of Attorney to transfer, endorsed upon each certificate thereof (or attached thereto) the said shares described on this page have been duly sold and delivered; and are hereby duly transferred by the undersigned, as hereon set forth, K. D. Hardy. Sheet No. 577. Date 12/30/32.

For value received we assign and transfer	Nos. of canceled certificates	Total	Folio	Unto—	Address	Nos. of certificates issued	Total Cr.	Folio
285 John T. Smith.	NC085	19,934	JB	John T. Smith, Innisfall Corporation	1775 Broadway, New York, N. Y. c/o John T. Smith, 1775 Broadway, New York, N. Y. Spotted.....	NC081 NC082 NC080	1,610 18,324	JB JB
		19,934						

Written by-KF. Stop Transfers TBM. Checked by FHB. Called
by ----- Checked by Peter Jim.

641

PLAINTIFFS' EXHIBIT 46

INVESTRAD CORPORATION

Original. Req. No. 240. Date December 30th, 1932.
Requisition for Shares of Capital Stock of Investrad Corporation.
Transfer Department: We request that you issue shares of stock
in names and amounts as set forth below, viz:

Certificate in name of	Address	Cert. No.	Cancel shares	Issue shares
John T. Smith.....	2.....	5407	2100y	
John T. Smith.....		5904		536y
Innisfail Corporation c/o John T. Smith.	1775 Broadway, New York, N. Y.	5995		1553y

• INVESTRAD CORPORATION,
By RENNE STRATON, *Treasurer.*

642

PLAINTIFFS' EXHIBIT 47

W30288, John T. Smith, NC20565, 100; NC20566, 100; NC20567,
100; NC20568, 100; John T. Smith, NC20569, 100. Innisfail Cor-
poration, 15 Exchange Pl., Jersey City, N. J., NC42029/33, 500.
Date 1/3/33. E. S. 2.

CHEMICAL BANK & TRUST COMPANY,
Transfer Agent.

J. W., *Attorney.*

The Electric Auto-Lite Company Common Stock (Without Par
Value).

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PLAINTIFFS' EXHIBIT 48

THE FIRESTONE TIRE & RUBBER COMPANY

COMMON STOCK

Transferred by City Bank Farmers Trust Company, New York,
Transfer Agent. A/C No. Date 1/3/33. Mail. Fractions. Hun-
dreds. Page No. 1.

Certificates surrendered	Cert. No.	Shares	Certificates issued	Cert. No.	Shares
32896. Kimbley & Co.	NYC05103	10	De Coppet & Doremus	5942	10
B32876. John T. Smith	NYC11269	400	Innisfail Corporation, 15 Exchange	5231/5	500
	NYC1130	100	Place, Jersey City, N. J.		
B3689. Mary Petkanich	AC0700	5	Carlisle Mellick & Co.	5943	5
32706. John W. Woodburn	AC4409	100	Sigler & Co., Central Hanover Bk.		
B33099. John H. Stuart	NYC5054	100	& Tr. Co., 70 Bway NYC	5236	100
			Harris Upham & Co.	5237	100

We hereby certify that this is a true and correct copy of the original.

CITY BANK FARMERS TRUST COMPANY,
A. HEWITT, *Authorized Officer.*

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PLAINTIFFS' EXHIBIT 49

2262. 1M-10-32. Commercial Trust Co., 15 Exchange Pl., Jersey City, N. J. 214136.

Name, Innisfail Corporation.

Address, 15 Exchange Place, Jersey City, N. J.

The Firestone Tire & Rubber Company, Common Stock.

Date	Certificates issued	No. of	Shares	Balance
1-3-33	NYC	3231	100	
"	"	3232	100	
"	"	3233	100	
"	"	3234	100	
"	"	3235	100	

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PLAINTIFFS' EXHIBIT 50

2622. 2500. 11-29- 2062.

Name, Chemical Bank and Trust Co.

Address, 55 Cedar St., New York, N. Y. a/c John T. Smith.

The Firestone Tire & Rubber Company, Common Stock.

Date	Certificates surrendered	No. Ctf.	Shares	Date	Certificates issued	No. Ctf.	Shs.	Balance
				Dec. 2, 1929	TNYC	975	100	
					TNYC	976	100	
					TNYC	977	100	
					TNYC	978	100	
					TNYC	979	100	
4-21-30	TNYC	975/0	500	4-21-30	NYC	1126	100	
					"	1127	100	
					"	1128	100	
					"	1129	100	
1-3-33	NYC	1126/30	500		"	1130	100	
				(5 x 100)				

Name, John T. Smith.

Address, 1775 Broadway, New York, N. Y.

The Firestone Tire & Rubber Company Common Stock.

Date	Certificate surrendered	No. Ctf.	Shares	Date	Certificates issued	No. Ctf.	Shs.	Balance
12-2-29	G	328	100	Sept. 24, 1928	G	878	100	

THE NATIONAL SUGAR REFINING COMPANY OF NEW JERSEY

Form S. T. 10-30-500.

We, the persons named below, recorded owners of the Capital Stock of The National Sugar Refining Company of New Jersey represented by the certificate described below, do by the undersigned Attorney hereby sell, assign, and transfer for the number of shares of said stock set opposite our respective names, to the persons indicated:

Transfer No.	Date of transfer	Certificates surrendered			Certificates issued				Address	Signature of attorney
		Certifi- cate No.	Certifi- cate No. 0	Shares	By whom surrendered	Certifi- cate No.	Certifi- cate No. 0	Shares	To whom transferred	
4466	1932 Dec. 27	5313		100	Hornblower & Weeks	5336		100	Joseph A. Parker	
4467	" 29	5393	5393	35	Wm. P. Hoffman & Co.	5406	5406	10	Wm. P. Hoffman & Co.	
4468	" 30	5433	5433	25	Joseph E. Cody	5404	5404	50	Clerk Dodge & Co.	
4469	" 31	5434	5434	50	Maynard, Oakley & Lawrence	5056	5056	50	Bonner & Co.	
4470	" 31	5435		100	Winthrop Mitchell & Co.	5006	5006	20	(Mrs.) Agnes D. Baumgardner	
	" 31	5436		800	John T. Smith	5007	5007	50	Winthrop Mitchell & Co.	
		5437				5337		100	Innissall Corporation	
		5438				5338		100	do	
		5439				5339		100	do	
		5440				5340		100	do	
		5441				5341		100	do	
		5442				5342		100	do	
		5443				5343		100	do	
		5444				5344		100	do	
		5445				5345		100	Hurley & Co.	
4471	1933 Jan. 2	5257		100	Quaw & Foley	5346		100	Jessie C. Lawrence	
4472	" 4	5258		100	do	5347		100	do	
	" 5	5259		100	do				do	
4473	" 4	T1128		4	(Mrs.) Nellie A. Freeman	5008	5008	4	(Mrs.) Nellie A. Anderson	
4474	" 4	4189		12	Kordula & Co.	5009	5009	12	Siger & Co.	
4475	" 5	5002		20	Helen Bowman McCabe, as Administrator with the Will Annexed of Libby O. Rykert, Deceased.	5010	5010	20	Fulmer, Rodney & Co.	
									55 Wall St., N. Y.	
									c/o The Fifth Ave. Bank of N. Y., Trust Dept., 530 Fifth Ave., N. Y.	
									Brainerd, Vt.	
									14 Wall St., N. Y.	

Certificates surrendered				Certificates issued			Address	Signature of attorney
Transfer No.	Date of transfer	Certificate No.	Shares	By whom surrendered	Certificate No.	Shares		
4476	1933 Jan. 5		50	Clarence E. Gables		50		
4477	" 6	5261	100	Quaw & Foley	5346	100	101 Prospect St., Prov., R. I.	
4478	" 7	5069	100	Stephen O. Metcalf	5340	100	412 Hosp. Tr. Bldg., Prov., R. I.	
		5075	100	do	5350	100	do	
		5076	100	do	5351	100	do	
				do			do	
		5007	100	do	5352	100	do	
		5142	100	do	5353	100	do	
4479	" 9		40	Minnie Frovenfeld	5612	40	120 Broadway, N. Y. City.	Wm. Green.
4480	" "		50	Scott & Stringfellow	5613	50	Wytheville, Va.	

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PLAINTIFFS' EXHIBIT 52

Stockholder's Name, John T. Smith. Residence, 1775 Broadway, N. Y. City. B-G Book of Account in Combination With Stock Book and Stock Ledger—The Broun-Green Co., 48 John St., N. Y.

Date of transfer of shares by the above named	To whom shares are transferred	Certificates surrendered		Date became owner	From whom shares were transferred (If original issue enter as such)	New certificates issued		Number of shares held (balance)
		Certif. Nos.	No. shares			Certif. Nos.	No. shares	
Dec. 27/1932	Innisfail Corp.	4	165	Oct. 29/29	Original Issue	4	165	165
Dec. 27/1932	Innisfail Corp.	6	166	Jan. 2/30	Original Issue	6	166	331
				May 5/31	Original Issue	10	67	398
				Oct. 8/31	Original Issue	11	31	118

Stockholder's name, Innisfail Corp. Residence, 15 Exchange Place, Jersey City, N. J. B-G Book of Account in Combination With Stock Book and Stock Ledger—The Broun-Green Co., 48 John St., N. Y.

Date of transfer of shares by the above named	To whom shares are transferred	Certificates surrendered		Date became owner	From whom shares were transferred (If original issue enter as such)	New certificates issued		Number of shares held (balance)
		Certif. Nos.	No. shares			Certif. Nos.	No. shares	
				Dec. 31/32	John F. Smith	12	331	331

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PLAINTIFFS' EXHIBIT 53

John Thomas Smith—Personal. Report of Examination. From November 1, 1931, to May 31, 1934. Barrow, Wade, Guthrie & Co., Accountants & Auditors.

John Thomas Smith—Personal. Report on Examination. From November 1, 1931, to May 31, 1934. Barrow, Wade, Guthrie & Co., Accountants and Auditors. (Established 1883.) Equitable Building, 120 Broadway, New York.

JULY 27, 1934.

Mr. JOHN THOMAS SMITH,

General Motors Building, 1775 Broadway, New York, N. Y.

DEAR SIR: As instructed by you, we have made an examination of your Personal Accounts and Office Records for the period from November 1, 1931, to May 31, 1934.

We submit the following Exhibits:

"A"—Balance Sheet as at May 31, 1934.

649 "B"—Capital Account from November 1, 1931, to May 31, 1934.

"C"—Income Account from November 1, 1931, to May 31, 1934, together with supporting schedules set forth below:

Schedules:

- #1. Investments and Securities at May 31, 1934.
2. Investments and Securities held in Safekeeping at May 31, 1934.
3. Notes Receivable.
4. Accounts Receivable.
5. Life Insurance Policies.
6. Dividends and Interest Received.
7. Salaries and Directors' Fees Received.
8. Office Income Account.
9. Loss on Sale of Investments—Net.
10. Personal Drawings and Disbursements.

No provision has been made in the foregoing statements for accruals of any kind.

With reference to the Balance Sheet, we have the following comments to make:

ASSETS

Cash in Banks and on Hand—\$33,967.00:

Confirmations of the amounts on deposit were received by us from the various depositaries and reconciled with the books.

In the course of our examination we counted the petty cash fund, traced all daily totals of cash received per the books into the various bank statements and examined all paid checks and supporting vouchers for the period under review.

Investments and Securities—Book Value—\$1,813,508.08:

The details of this amount are shown on Schedule #1 together with market values at July 21, 1934, where obtained.

The changes in the Investment Accounts during the period were checked by us and found to be correctly recorded.

We examined the securities on July 23, 1934, as of July 21, 1934, representing the Investments and Securities set forth in Schedules #1 and #2. All of said securities were found to be in order subject to the following exceptions:

We examined stock certificates covering 300 shares of the Star Tungsten Company common stock, par value \$100.00 each, whereas the books show the holding to be 400 shares. These 400 shares are carried in the books at a total value of \$1.00.

We did not examine stock certificates for 102 $\frac{2}{3}$ shares of National Baking Company common stock, which we are informed are held by Mr. Coad.

Notes Receivable—\$40,656.54:

The details of the notes receivable and the collateral held therefor, valued at market prices at July 21, 1934, as shown on Schedule #3.

The notes and collateral were examined by us.

Accounts Receivable—\$277.15:

Details of this amount are set forth on Schedule #4.

651 Lease and beneficial interest including improvements and furnishings in apartment—\$238,703.64:
The above comprises the following:

Cost of 495 shares, par value \$100.00 each, of 1115 Fifth Avenue Corp. purchased December 31, 1928 \$49,500.00

Add—Amounts paid on account of amortization of mortgage on property:

Year ended December 31, 1928	\$622.20
Year ended December 31, 1929	622.20
Year ended December 31, 1930	622.20
Year ended December 31, 1931	622.20
Year ended December 31, 1932	622.20
Year ended December 31, 1933	622.20
	<u>3,733.20</u>

53,233.20

Decorations:
Balance, November 1, 1931—No additions since 49,410.28

Furnishings:
Balance, November 1, 1931 134,492.89

Add—Furniture and furnishings by Herbert Abbot, June 30, 1932 1,567.29

136,060.18

Per Balance Sheet—Exhibit "A" 238,703.64

The 495 shares of 1115 Fifth Avenue Corporation stock were examined by us.

652 Southampton Property Including Furnishings—\$165,065.32:
The cost of the Southampton Property and furnishings is listed hereunder:

Property:	\$145,000.00
Cost of Property	370.00
Title examination less refund of commission	125.00
Survey	4.00
Recording of Two Deeds	
	<u>145,499.00</u>

Furnishings:	\$1,925.00
Chutjian & Schneider—Rugs	17,640.72
Herbert Abbot—Furniture, Drapes, etc.	
	<u>19,565.72</u>

165,065.32

Per Balance Sheet—Exhibit "A"

We examined the deed, title policy, and insurance policies. The latter consist of policies in the face amount of \$130,000 and \$20,000 for fire insurance on the buildings and furnishings, respectively. The Innisfail Corporation holds the first mortgage of \$130,000 on this property.

Tug Venture Account—\$12,968.75:

There has been no change in this account during the period under review.

653 The following amounts were received from the Tide Towing Lines, Inc., and have been included in the Income Account—Exhibit "C":

Jan. 21, 1932—Division of Tice Towing Line, Inc., profits to December 31, 1931, before depreciation	\$343.32
Feb. 1, 1933—Division of Tice Towing Line, Inc., profits to December 31, 1932, before depreciation	663.10
	<u>\$1,006.42</u>

Reserve for Depreciation—Tug Venture—\$1,815.62:

The above consists of the accrued provision for depreciation on the Tug Venture investment of \$12,968.75 at the rate of seven percent per annum for the years 1932 and 1933.

John Thomas Smith—Trustee, Under Deed Dated December 29, 1919:

Advances Against Income—\$4,109.20:

This amount agrees with the corresponding accounts in the books of the Trust.

Life Insurance Policies—\$320,000.00:

A list of these policies and also the cash or loan values at May 31, 1934, are shown on Schedule #5.

We examined the policies and also the relative current premium receipts.

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LIABILITIES

Accounts Payable—\$262.69.

This balance is made up of the following:

Frank P. Smith	\$236.60
North German Lloyd Steamship Co	26.09
	<u>\$262.69</u>

Innisfail Corporation—Current Account—\$55,202.04:

The above agrees with the books of the Innisfail Corporation.

John Thomas Smith—Trustee, Under Deed Dated December 29, 1919—\$5,094.89:

Funds held for Account of Principal:

Joseph B. Smith \$4,015.49

Funds held for Account of Income:

Gerard C. Smith \$403.20

Joseph B. Smith 586.20

1,079.40

\$5,094.89

These amounts agree with the corresponding accounts in the books of the Trust.

Capital—\$2,116,880.44:

The changes in the Capital Account during the period are shown on Exhibit "B" and, we believe, are self-explanatory.

The details of Personal Drawings and Expenses are set forth in Schedule #10.

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INCOME ACCOUNT

The Income Account is submitted in Exhibit "C" and is supported by various schedules as indicated therein.

We ascertained that all dividends and interest receivable on the investments held had been duly accounted for.

Yours very truly,

BARROW, WADE, GUTHRIE & Co.

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EXHIBIT "A"

JOHN THOMAS SMITH—PERSONAL BALANCE SHEET AS AT MAY 31, 1934

ASSETS.

Cash in Banks and on Hand	\$33,967.00	
Investments and Securities—Book Value (Schedule #1)	1,813,508.08	
Notes Receivable—Partially Secured (Schedule #3)	40,656.54	
Accounts Receivable (Schedule #4)	277.15	
Lease and Beneficial Interest Including Improvements and Furnishings in Apartment (495 shares—1115 Fifth Avenue Corporation)	238,703.64	
Southampton Property Including Furnishings	\$165,065.32	
Less—Mortgage held by Innisfail Corporation	130,000.00	
	35,065.32	
Tag Venture Account (Interest in 20 Tugs)	\$12,908.75	
Less—Reserve for Depreciation	1,815.62	
	11,153.13	
John Thomas Smith—Trustee—Under Deed dated December 29, 1919:		
Trustee's Advances against Income:		
Maureen V. Smith	\$1,368.25	
Gregory B. Smith	2,740.95	
	4,109.20	
Insurance Policies on Life of John Thomas Smith (Schedule #5):		
Amount of Insurance	\$320,000.00	
Cash or Loan Value	68,632.50	
	\$2,177,440.06	

LIABILITIES

Accounts Payable	\$262.69	
Innisfail Corporation—Current Account	55,202.04	
John Thomas Smith—Trustee—Under Deed dated December 29, 1919:		
Funds held for Account of Principal:		
Joseph B. Smith	\$4,015.49	
Funds held for Account of Income:		
Gerard C. Smith	\$493.20	
Joseph B. Smith	586.20	
	1,079.40	
	5,094.89	
Capital (Exhibit "B")	2,116,880.44	
	\$2,177,440.06	

EXHIBIT "B"

JOHN THOMAS SMITH—PERSONAL CAPITAL ACCOUNT

For Period from November 1, 1931, to May 31, 1934

	Total from Nov. 1, 1931 to May 31, 1934	2 months- ended Dec. 31, 1931	Year ended Dec. 31, 1932	Year ended Dec. 31, 1933	5 months ended May 31, 1934
Balance at commencement of Period	\$2,563,478.10	\$2,563,478.10	\$2,257,370.11	\$1,955,549.68	\$2,088,972.85
Add:					
To reverse loss on sale of 1,000 shares of Chrysler Corporation Common Stock in 1929 to Dr. W. E. Ray—sale cancelled	38,339.20	38,339.20			
Stock dividends received March 12, 1932 and April 6, 1934 on holding of 1,500 shares of General Motors Management Corporation Common Stock, namely, 1,500 shares and 600 shares, respectively, of General Motors Management Corporation "B" Stock valued at \$20.00 per share	96,000.00		60,000.00		36,000.00
Third instalment of bonus of General Motors Corporation, Common Stock—161 shares received January 2, 1932 valued at indicated market price \$22.94—\$3,642.63; Fourth instalment of 161 shares received January 3, 1933 valued at indicated market price \$13.34—\$2,135.25	5,775.88		3,642.63	2,135.25	
Asset not previously recorded on books—7 shares of Greenwich Country Club	700.00		700.00		
Net Income—Exhibit "C"	389,185.83	327,698.88	313,963.55	196,003.52	59,371.06
	\$2,318,107.35	\$2,274,220.42	\$2,007,749.19	\$2,153,686.45	\$2,181,343.91
Deduct:					
Gift of 10 shares of General Motors Corporation Common Stock to Gerard C. Smith	\$226.70				\$226.70
Personal Drawings and Disbursements (Schedule #10)	198,000.21	\$16,850.31	\$52,199.51	\$64,713.60	64,238.79
	\$178,226.91	\$16,850.31	\$52,199.51	\$64,713.60	\$64,465.49
Balance at end of Period—Per Balance Sheet—Exhibit "A"	\$2,116,880.44	\$2,257,370.11	\$1,955,549.68	\$2,088,972.85	\$2,116,880.44

(Italic figures were red in original.)

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EXHIBIT "C"

JOHN THOMAS SMITH—PERSONAL INCOME ACCOUNT

For Period from November 1, 1931, to May 31, 1934.

	Total from Nov. 1, 1931, to May 31, 1934	2 months ended Dec. 31, 1931	Year ended Dec. 31, 1932	Year ended Dec. 31, 1933	5 months ended May 31, 1934
Receipts:					
Dividends and Interest on Investments (Schedule #6)	\$414,318.23	\$77,057.25	\$162,025.36	\$146,440.90	\$28,791.72
Interest on Loans	320.83			320.83	
Interest on Bank Accounts	809.84	32.90	306.60	270.44	
Salaries and Directors' Fees (Schedule #7)	167,922.50	11,880.00	64,547.50	63,880.00	27,915.00
Net Office Income (Schedule #8)	5,548.06	809.89	7,166.25	7,874.55	332.59
	\$580,028.35	\$88,100.12	\$233,916.21	\$209,637.82	\$36,374.20
Deduct—Expenses:					
Tug Venture Account:					
Income	\$1,006.48		\$343.38	\$693.70	
Less—Provision for Depreciation	1,815.62		907.81	907.81	
Net	\$890.20		\$564.49	\$244.71	
Loss on Sale of Investments—Net (Schedule #9)	927,340.97	\$410,375.01	516,965.96		
Loan to Frank J. Colan written off	50.00			50.00	
Worthless stock written off—American Social Registry, Inc.	550.00			550.00	
Interest on Bank Loans	35,666.79	5,320.83	22,343.85	7,991.11	
Sundry Taxes and Collection Fees	4,808.22	1.16	5.46	4,798.48	\$3.12
	\$969,214.18	\$415,697.00	\$539,879.76	\$13,634.30	\$3.12
Net Income per Capital Account, Exhibit "B"	\$389,185.83	\$327,496.89	\$313,965.55	\$196,003.52	\$36,371.08

(Italic figures were red in original.)

SCHEDULE #1

JOHN THOMAS SMITH—PERSONAL INVESTMENTS AND SECURITIES

May 31, 1934

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	Par	Number of shares	Book value	Indicated market price July 21, 1934	Indicated market value July 21, 1934	Increase decrease as compared with book values	Book values where market values July 21, 1934 not obtained
Argonaut Consolidated Mining Co., Common	85	4,907	\$2,041.50	Not obtained			\$2,041.50
Argonaut Mining Co., Ltd., Common		1,338	2,064.67	Not obtained	\$11,373.00	\$9,296.33	1,000.00
Bathing Corp. of Southampton, Property Cts.		8	1,000.00	Not obtained	9,304.00	1,711.13	30.00
Caterpillar Tractor Co., Common	No Par	381	8,194.87	Not obtained			
Canadian Refractories, Ltd., Common	No Par	6	30.00	Not obtained	3,071.25	102.64	5,815.00
Central Acquire Associates, Common	No Par	105	3,177.50	Not obtained			
Central Acquire Sugar Co., Common	No Par	133	5,815.00	Not obtained	461,114.50	227,633.68	1,000.00
Chrysler Corporation, Common	No Par	11,977	233,460.82	Not obtained			30.27
Deer Golf Club, 6% Bonds due 1940	No Par	\$1,000	1,500.00	Not obtained			17,500.00
Deer Golf Club, Common	\$100	6	30.27	Not obtained			
Equadorian Corporation, Ltd., Ordinary	No Par	10	1.00	Not obtained			
Garrison Fire Detecting System, Inc., Common	No Par	1,429	17,500.00	Not obtained	1,566,466.87	981,329.98	150,000.00
Glyzer Electric Co., Inc., Common	\$100	118	565,139.89	Not obtained			
General Motors Corp., Common	\$10	51,999	150,000.00	Not obtained	180,750.00	29,550.00	
General Motors Management Corp. (Ctf. of Deposit), Common	\$10	1,500	240,000.00	Not obtained	1,538,336.25	1,338,336.25	700.00
General Motors Management Corp. (Ctf. of Deposit), Class "B"	\$10	6,000	30,000.00	Not obtained			357,330.87
General Motors Securities Co., Class "A"	\$100	45,000	30,000.00	Not obtained			6,000.00
Greenwich Country Club, Common	\$100	7	357,330.87	Not obtained			
Invested Corporation, Common	No Par	100	6,000.00	Not obtained			
Invested Corporation, Common	No Par	556	14,400.00	Not obtained	40,260.00	25,860.00	2,000.00
Kennecott Copper Corporation, Common	No Par	2,000	2,000.00	Not obtained			
Knollwood Country Club, Property Cts.	\$100	132	3,037.00	Not obtained	3,138.00	98.40	
National Baking Co., Preferred	No Par	1,712 ²⁵	7,498.00	Not obtained	1,712.00	5,777.00	
National Baking Co., Common	\$100	900	16,312.50	Not obtained	9,900.00	6,412.50	
New York, New Haven & Hartford Railroad Co., Common	No Par	5,227 ²⁵	41,125.00	Not obtained	15,682.00	25,443.00	
Paramount Public Corporation, Common	\$100	45,000	1,112.50	Not obtained	2,300.00	1,187.50	500.00
Paramount Public Corporation, 8 1/2% Bond due 1950	\$100	5	500.00	Not obtained			800.00
Paramount Country Club, Common	\$100	8	820.00	Not obtained			
Shinnecock Hills Golf Club, Common	\$100	1,617	37,280.12	Not obtained	43,294.75	5,974.63	
Standard Oil Co. of Indiana, Common	\$25	1,617	1.00	Not obtained			1.00
Star Tugsten Co., Common	\$100	400	52,962.98	Not obtained			52,962.98
White Knob Copper & Development Co., Ltd., Preferred	\$10	53,519 ²⁵	2,498.99	Not obtained			2,498.99
White Knob Copper & Development Co., Ltd., Common	\$10	84,970	\$1,813,506.08	Not obtained	\$3,707,255.62	\$2,494,439.15	\$400,691.61

*Market Price per share taken as equivalent to General Motors Corp. Common Stock.
(Italic words and figures were read in original.)

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JOHN THOMAS SMITH

PERSONAL INVESTMENTS AND SECURITIES HELD IN SAFEKEEPING MAY 31,
1934

	Par	Number of shares
Mary A. Smith:		
Argonaut Consolidated Mining Co., Common	\$5	1,900
Caterpillar Tractor Co., Common	No Par	4,000
Central Aguirre Sugar Co., Common	\$20	420
Chrysler Corporation, Common	No Par	1,000
General Motors Corporation, Common	\$10	37,585
The Harriman National Bank & Trust Co., Common	Scrip	6/180
Industrial Rayon Corporation, Common	No Par	5,700
Paramount Publix Corporation, Common	No Par	4,000
Underwood Elliott Fisher Co., Common	No Par	1,000
White Knob Copper & Development Co., Common	\$10	9,900
White Knob Copper & Development Co., Preferred	\$10	6,195
Maureen V. Smith:		
Argonaut Consolidated Mining Co., Common	\$5	74
Caterpillar Tractor Co., Common	No Par	50
General Motors Corporation, Common	\$10	71
The Harriman National Bank & Trust Co., Common	Scrip	6/180
National Baking Co., Common	No Par	45
National Baking Co., Preferred	\$55	408
Standard Oil Co. of Indiana, Common	\$25	78
Gregory B. Smith:		
Caterpillar Tractor Co., Common	No Par	40
The Harriman National Bank & Trust Co., Common	Scrip	6/180
National Baking Co., Common	No Par	45
National Baking Co., Preferred	\$55	416
New York, New Haven & Hartford R. R. Co., Common	\$100	100
Standard Oil Co. of Indiana, Common	\$25	77
Gerard C. Smith:		
Caterpillar Tractor Co., Common	No Par	29
General Motors Corporation, Common	\$10	10
The Harriman National Bank & Trust Co., Common	Scrip	6/180
Frank P. Smith:		
General Motors Corporation, Common	\$10	115
James A. Smith:		
Caterpillar Tractor Co., Common	No Par	17
General Motors Corporation, Common	\$10	115
Madeline M. Fuller:		
General Motors Corporation, Common	\$10	90
National Baking Company:		
The Chase National Bank, Common	\$20	100
Jewel Tea Company, Common	No Par	100

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SCHEDULE #3

JOHN THOMAS SMITH—PERSONAL NOTES RECEIVABLE MAY 31, 1934 .

Mrs. Wyeth Ray:	
Demand Note dated March 31, 1931	\$60,998.87
Add—Charge for purchase of 2,320 shares of General Motors Corporation	30,859.25
	\$100,858.12
Deduct—Credits from proceeds of securities sold and dividends received	79,884.91
Balance due May 31, 1934	\$20,973.21

		Indicated market prices July 21, 1934	Indicated market values July 21, 1934
Mrs. Wyeth Ray—Continued.			
Secured by the following:			
4,529 sha.	General Motors Corporation—Common	30%	\$48,061.12
500 "	Sinclair Consolidated Oil Co.—Common	9 1/2	4,562.50
300 "	National Baking Company—Preferred	23	6,900.00 ^b
7,350 "	Argonaut Consolidated Mining Co.—Common	Not obtained.	Not obtained.
			\$57,523.62

Dr. Edward J. McCabe:

Balance due May 31, 1934

\$4,683.33

Unsecured Demand Notes as follows:

Date		Amount
May 16, 1930	With interest at 6% per annum	\$433.33
Sept. 17, 1930	do	1,000.00
Nov. 24, 1930	do	750.00
Apr. 1, 1931	do	750.00
Apr. 30, 1932	do	750.00
Apr. 12, 1934	do	1,000.00
		\$4,683.33

Gaynor Electric Company:

Unsecured Note dated June 26, 1933, due December 1, 1933, with interest at 5% per annum

15,000.00

\$40,356.54

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SCHEDULE #4

JOHN THOMAS SMITH—PERSONAL ACCOUNTS RECEIVABLE

MAY 31, 1934

Argonaut Consolidated Mining Co., Office Ledger Account	\$9.62
Argonaut Mining Co., Ltd., Office Ledger Account	21.41
Doty, W., Cash Advanced September 19, 1933, less repayments of \$90.00	10.00
1115 Fifth Avenue Corporation, Office Ledger Account	12.33
Gaynor, Estate of Frank A., Office Ledger Account	9.00
Michel, Helen, Balance owing since November 9, 1926, in connection with purchase of 10 shares of Chrysler Corp. Preferred Stock—no payment received	35.00
National Baking Co., Office Ledger Account	161.00
Smith, James A., Balance unchanged since December 31, 1930	10.68
White Knob Copper & Development Co., Office Ledger Account	7.00

Per Balance Sheet—Exhibit "A"

\$277.15

663 SCHEDULE #5

JOHN THOMAS SMITH—PERSONAL—LIFE INSURANCE POLICIES—MAY 31, 1934, ON LIFE OF JOHN THOMAS SMITH

Name of company	Policy number	Effective date	Amount of policy	Annual premium	Cash or loan value May 31, 1934	Beneficiary
Aetna Life Insurance Co. of Hartford, Conn.	356243	Apr. 21, 1923	\$50,000	\$1,384.00	\$10,150.00	Mary A. Smith.
Do.	356244	Apr. 21, 1923	50,000	1,384.00	10,150.00	Do.
Do.	356245	Apr. 21, 1923	50,000	1,384.00	10,150.00	Do.
Connecticut General Life Insur. Co. of Hartford, Conn.	67755	Oct. 29, 1910	10,000	296.50	3,320.00	Do.
Do.	67756	Oct. 29, 1910	10,000	197.90	3,320.00	Do.
The Travelers Insurance Co. of Hartford, Conn.	849041	July 16, 1922	50,000	1,503.75	11,138.00	Executors, Administrators, or Assigns.
Do.	850960	July 16, 1922	50,000	1,386.00	11,138.00	Mary A. Smith.
Do.	902452	Apr. 19, 1923	50,000	1,446.50	9,206.50	Executors, Administrators, or Assigns.
Per Balance Sheet—Exhibit "A"			\$320,000	\$8,922.65	\$68,632.50	

664 SCHEDULE #6

JOHN THOMAS SMITH—PERSONAL

Dividends and Interest Received From November 1, 1931, to May 31, 1934

	Total	2 months ended Dec. 31, 1931	Year ended Dec. 31, 1932	Year ended Dec. 31, 1933	5 months ended May 31, 1934
American Radiator & Standard Sanitary Co.	\$150.00	\$150.00			\$215.35
Argonaut Consolidated Mining Co.	245.35				669.00
Argonaut Mining Co., Ltd.	669.00				95.29
Caterpillar Tractor Co.	2,466.53	2,085.50	\$238.14	\$47.63	78.76
Central Aguirre Associates	380.64		150.00	151.88	
Central Aguirre Sugar Co.	900.00		180.00	720.00	
Chrysler Corporation	45,817.50		30,846.25	11,977.00	2,994.25
Deal Golf Club	180.00	30.00	60.00	60.00	30.00
Ecuadorian Corporation	1.10		1.00		.10
Electric Auto-Life Co.	1,450.00		1,300.00	150.00	
Firestone Tire & Rubber Co.	500.00		500.00		
Fourth National Investors Corp.	110.00		110.00		
General Electric Co.	3.60		3.60		
General Motors Corp.	184,774.00	39,749.25	67,011.25	65,011.25	13,002.25
General Motors Securities Co.	157,758.64	33,817.50	56,362.50	56,306.14	11,272.50
Industrial Rayon Corp.	2,100.00		2,100.00		
Innisfail Corp.	10,000.00			10,000.00	
International Nickel Co. of Canada, Ltd.	100.00	100.00			
National Sugar Ref. ing Co.	2,000.00		1,000.00	400.00	
Paramount Public Corp. 5½% Bonds	54.38		34.38		
Standard Oil Co. of Indiana	3,896.25	375.00	1,500.00	1,617.00	494.25
Third National Investors Corp.	100.00		100.00		
Underwood Elliott Fisher Co.	750.00	750.00			
Per Income Account—Exhibit "C"	\$414,318.23	\$77,037.25	\$162,028.30	\$146,440.90	\$28,791.72

SCHEDULE #7

JOHN THOMAS SMITH—PERSONAL

Salaries and Directors' Fees Received From November 1, 1931, to May 31, 1934

	Total	2 months ended Dec. 31, 1931	Year ended Dec. 31, 1932	Year ended Dec. 31, 1933	5 months ended May 31, 1934
General Motors Corporation—Salary	\$147,500.00	\$10,000.00	\$50,500.00	\$56,250.00	\$24,750.00
General Motors Corporation—Directors' Fees	850.00	300.00	350.00	200.00	
Argonaut Consolidated Mining Co.—Salary	3,875.00	250.00	1,500.00	1,500.00	625.00
Argonaut Consolidated Mining Co.—Directors' Fees	50.00	30.00	10.00	10.00	
Argonaut Mining Co., Ltd.—Salary	14,150.00	1,000.00	5,500.00	5,400.00	2,200.00
Ecuadorian Corporation, Ltd.—Directors' Fees	1,437.50		687.50	500.00	250.00
Western Air Express—Directors' Fees	60.00			20.00	40.00
Per Income Account—Exhibit "C"	\$167,922.50	\$11,580.00	\$64,547.50	\$63,880.00	\$27,915.00

SCHEDULE #8

JOHN THOMAS SMITH—PERSONAL

Office Income Account From November 1, 1931, to May 31, 1934

	Total	2 months ended Dec. 31, 1931	Year ended Dec. 31, 1932	Year ended Dec. 31, 1933	5 months ended May 31, 1934
Fees and Salaries Received	None				
Expenses:					
Salaries	\$2,765.00	\$485.00	\$965.00	\$1,065.00	\$320.00
Expenses	578.65	84.93	201.25	209.35	83.25
Net Income per Income Account—Exhibit "C"	\$3,343.05	\$569.93	\$1,166.25	\$1,274.35	\$332.75
	\$3,843.05	\$569.93	\$1,166.25	\$1,274.35	\$332.75

667.

SCHEDULE #9

JOHN THOMAS SMITH—PERSONAL

Loss on Sale of Investments—Net, For period from November 1, 1931, to May 31, 1934

	Number of shares sold	Book value	Net proceeds	Loss on sale
Two Months Ended December 31, 1931:				
American Radiator & Standard Sanitary Co.	1,000	\$30,150.00	\$5,885.00	\$24,265.00
Anaconda Copper Mining Co.	2,800	100,774.70	30,587.50	70,187.20
Caterpillar Tractor Co.	4,000	109,610.45	45,840.00	63,770.45
Chrysler Corporation	1,000	71,339.20	13,585.00	57,754.20
Fourth National Investors Corp.	200	6,230.00	3,099.88	3,130.12
Industrial Rayon Corp.	2,100	90,120.00	51,451.00	38,669.00
International Nickel Co. of Canada	2,000	48,577.50	14,770.00	33,807.50
Motor Products Corp.	500	23,587.50	11,292.50	14,295.00
Paramount Public Corp.	4,000	98,600.00	26,340.00	72,260.00
Third National Investors Corp.	200	5,817.50	2,595.96	3,221.54
Underwood Elliott Fisher Co.	1,000	45,880.00	16,835.00	29,045.00
Total—2 months ended December 31, 1931		\$632,656.85	\$222,281.84	\$410,375.01
Year Ended December 31, 1932:				
Chrysler Corporation	13,500*	\$460,881.98	\$204,503.50	\$256,378.48
Electric Auto-Lite Company	500	19,575.00	8,960.00	10,615.00
Fajardo Sugar Co. of Porto Rico	112	10,143.75	4,108.12	6,035.63
Firestone Tire & Rubber Co.	500	17,525.00	6,496.00	11,029.00
Gaynor Electric Co., Inc.	332	50,000.00	3,293.44	46,706.56
General Electric Co.—Special Stock	12		125.38	125.38
General Motors Corp.	2,000	104,350.00	24,384.00	79,966.00
Investrad Corp.	1,553	33,498.95	6,755.56	26,743.39
National Baking Co.	18,324	67,528.66	16,878.08	70,670.58
National Sugar Refining Co.	800	25,875.00	16,828.00	9,047.00
Total—Year ended December 31, 1932		\$809,378.04	\$292,412.08	\$516,965.96
Per Income Account—Exhibit "C"				\$927,340.97

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SCHEDULE #10

JOHN THOMAS SMITH—PERSONAL

Personal Drawings and Disbursements, For Period from November 1, 1931, to May 31, 1934

	Total	2 months ended Dec. 31, 1931	Year ended Dec. 31, 1932	Year ended Dec. 31, 1933	5 months ended May 31, 1934
Personal Drawings and Expenses	\$25,307.44	\$1,060.68	\$7,901.53	\$13,734.03	\$5,332.65
Expenses—No. 1115 Fifth Avenue, New York City	20,029.46	2,236.68	7,676.73	7,190.63	2,928.42
Expenses—Southampton, L. I.	39,138.03		20,338.01	16,615.38	2,184.64
Automobile Expenses	5,177.97	620.74	1,723.40	2,781.31	352.52
Charitable Contributions	4,167.50	210.00	1,065.00	1,702.50	1,190.00
Clubs	7,579.98	628.10	3,389.50	2,535.33	1,027.05
Insurance Premiums	34,498.74	27.00	10,009.13	15,362.63	9,099.98
Federal Income Taxes	35,487.64	14,577.87		4,407.29	16,502.48
New York State Income Taxes	25,682.41		61.37		23,621.04
Customs Duty on Merchandise and Personal Effects	630.94	210.60	34.84	385.50	
Per Capital Account—Exhibit "B"	\$198,000.21	\$16,850.31	\$52,199.51	\$64,713.00	\$64,236.79
Personal Drawings and Expenses:	\$3,874.67				
Less—Refund of unused letter of credit	\$3,050.00				
Less—Deposits	2,485.35	5,535.35			
Net—as above	\$1,339.32				

(Figures in italics were in red in original.)

PLAINTIFFS' EXHIBIT 54

INNISFAIL CORPORATION

Report on examination November 1, 1931, to May 31, 1934

JULY 27, 1934

Mr. JOHN THOMAS SMITH,

*President, Innisfail Corporation,**General Motors Building, 1775 Broadway,**New York, N. Y.*

DEAR SIR: As instructed by you, we have made an examination of the books, accounts, and vouchers of the Innisfail Corporation from November 1, 1931, to May 31, 1934.

We submit the following Exhibits:

"A"—Balance Sheet as at May 31, 1934.

"B"—Income account from November 1, 1931, to May 31, 1934, together with the following supporting schedules:

Schedules:

#1. Investments and Securities—May 31, 1934.

2. Dividends Received from November 1, 1931, to May 31, 1934.

670 No provision has been made in the foregoing statements for accruals of any kind.

With reference to the Balance Sheet, we have the following comments to offer:

ASSETS

Cash in Bank—\$802.76:

Confirmation of the balance on deposit was obtained by us from The New York Trust Company and reconciled with the above figure.

Investments and Securities—Book Value—\$620,489.86:

The details of this amount are shown on Schedule #1, also the indicated market values at July 21, 1934, where obtainable.

We checked the changes in the investments during the period under review and found them correctly recorded.

The securities representing the investments set forth in Schedule #1 were examined by us and appeared to be in order.

Mortgage Receivable on Southampton Property—\$130,000.00:

This consists of a first mortgage on property located at Ox Pasture Road, Southampton, Long Island. The mortgage, bond, and assignments of mortgage were examined by us. We noted that the assignment from Mr. Henry M. Hogan to Innisfail Corporation has not been recorded. We also examined insurance policies on the buildings and furnishings in the face amount of \$130,000.00 and \$20,000.00, respectively.

Mrs. Anna M. Ray—Current Account—\$6,247.50:

The balance in this account represents the cost of 7,350 shares of Argonaut Consolidated Mining Company purchased

for her account. Payment was received for this transaction on June 8, 1934.

John Thomas Smith—Current Account—\$55,202.04

The above agrees with the books of Mr. John Thomas-Smith.

LIABILITIES

Capital Stock—\$10,000.00:

The Capital Stock consists of 100 shares of par value \$100.00 each, owned entirely by Mr. John Thomas Smith.

Paid-in Surplus—\$863,741.00:

There have been no changes in this account during the period under review.

Earned surplus—\$60,998.84:

The above amount is arrived at as follows:

Balance—November 3, 1931 (Credit)	\$16,114.86
Deduct:	
Dividend of \$100.00 per share declared and paid December 29, 1933	\$10,000.00
Net Loss for period from November 1, 1931 to May 31, 1934 (Exhibit "B")	67,113.70
	<u>77,113.70</u>
Balance—May 31, 1934 (Debit)	<u>60,998.84</u>

The payment of the above dividend was duly authorized by the minutes.

We noted that the Minutes for the period under review failed to mention the approval of the Board of Directors of the purchase and sale of the undernoted securities in 1933:

Purchases: 1,000 shares Columbia Gas & Electric Corp.

Sales: 8,000 shares Chrysler Corporation.

GENERAL

We satisfied ourselves that the income on the investments held had been properly accounted for.

The daily totals of all receipts entered in the books were traced to the various bank statements.

Paid checks and other vouchers were examined in support of the disbursements made during the period.

Yours very truly,

BARROW, WADE, GUTHRIE & Co.

EXHIBIT "A"

INNISFAIL CORPORATION BALANCE SHEET AS AT MAY 31, 1934

ASSETS

Cash in Bank	\$802.73
Investments and Securities—Book Value (Schedule #1)	620,489.86
Mortgage Receivable on Southampton Property	130,000.00
Mrs. Anna M. Ray—Current Account	6,247.50
John Thomas Smith—Current Account	55,202.04
	<u>\$812,742.16</u>

LIABILITIES

Capital Stock:

Authorized and Issued:

100 shares par value \$100.00 each \$10,000.00

Surplus:

Paid-in-Surplus \$863,741.00

Earned Surplus—November 1, 1931 \$16,114.86

Deduct:

Dividend of
\$100.00 per share
declared Decem-
ber 29, 1933 \$10,000.00

Income Account—

Loss for period
from November
1, 1931, to May
31, 1934 (Ex-
hibit "B")

67,113.70 77,113.70 60,998.84 802,742.16

\$812,742.16

(Italic figures were in red in original.)

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EXHIBIT "B"

INNISFAIL CORPORATION

Income Account From November 1, 1931 to May 31, 1934

	Total	2 months ended Dec. 31, 1931	Year ended Dec. 31, 1932	Year ended Dec. 31, 1933	5 months ended May 31, 1934
Income:					
Dividends Received (Schedule # 2)	\$39,923.14		\$22,405.05	\$12,558.04	\$4,963.05
Interest on Bank Account	197.51	\$4.30	45.80	147.21	
	\$40,120.45	\$4.30	\$22,450.85	\$12,705.25	\$4,963.05
Expenses:					
Loss on Sale of Investments:					
Bondshares Fiscal Corporation—Common—500 shares	\$5,025.00			\$5,025.00	
Chrysler Corporation—Common—6,000 shares	36,051.60			36,051.60	
Chrysler Corporation—Common—2,000 shares	39,957.80			39,957.80	
Gimbel Bros., Inc.—Common—200 shares	7,631.00		\$7,631.00		
Hubert Motor Car Co.—Common—1,900 shares	94,032.00		94,032.00		
	\$102,781.80		\$101,663.00	\$1,118.80	
Loss on Young Kolbe Syndicate	447.48			477.48	
Salaries	3,500.00	\$800.00	900.00		\$2,000.00
Miscellaneous	478.87	10.00	271.00	171.20	22.61
	\$107,234.15	\$810.00	\$102,834.06	\$1,767.48	\$2,022.61
Net Income (Exhibit "A")	\$37,113.70	\$305.70	\$30,385.81	\$10,934.77	\$2,940.44

(Italic figures were in red in original.)

INNISFAIR CORPORATION INVESTMENTS AND SECURITIES—MAY 31, 1934

JOSEPH T. HIGGINS VS. JOHN T. SMITH

	Par	Number of shares	Book value	Indicated market price July 21, 1934	Indicated market values July 21, 1934	Decrease as compared with book values	Book values where market values July 21, 1934, not obtained
Alaburn Corporation, Common	\$100	1,000	\$100,800.00	Not Obtained			\$100,800.00
Argonaut Consolidated Mining Co., Common	\$5	16,216	17,187.80	Not Obtained			17,187.80
Chrysler Corporation, Common	No Par	8,477	299,705.52	38%	\$328,354.96	\$28,649.44	
Columbia Gas & Electric Corporation, Common	do	1,000	18,766.00	10%	10,250.00	\$8,516.00	
Columbia Gas & Electric Corporation, 7% Preferred	\$100	34	\$3,900.00	60%	277.81		
Ecuadorian Corporation, Ltd., 7% Preferred	\$100	31	37,300.35	Not Obtained			31,300.35
Ecuadorian Corporation, Ltd., Ordinary	No Par	11,168	9,000.90	99%	9,875.00	875.00	
Electric Auto-Lite Co., Common	do	500	6,800.00	15	7,500.00	1,000.00	
Piedmont Tire and Rubber Co., Common	\$10	500	8,326.00	Not Obtained			
Gaynor Electric Co., Inc., Common	\$100	332	6,879.84	Not Obtained			3,320.00
Investrad Corporation, Common	No Par	1,353	18,324.03	Not Obtained			6,879.80
National Baking Co., Common	do	18,324	16,900.00	37	18,324.00		
National Sugar Refining Co. of N. J., Common	do	800	3,042.81	17	29,600.00	12,700.00	
Pathe Exchange, Inc., Preference "A"	do	17,400	3,042.81	102	23,800.00	20,757.19	
Pathe Exchange, Inc., 8% Preferred	\$100	463	30,508.99	99%	47,220.00	16,711.01	
Pathe Exchange, Inc., 7% Debenture Bonds due 1937	\$10	\$30,000	27,387.84	Not Obtained	35,808.00	11,420.16	
White Knob Copper & Development Co., Ltd., Preferred	\$10	645	498.25	Not Obtained			498.25
White Knob Copper & Development Co., Ltd., Common	\$10	103	3.99	Not Obtained			3.99
			\$620,480.86		\$811,972.31	\$191,491.45	\$210,900.10

(Italic figures were read in original)

SCHEDULE #2

INNISFAIL CORPORATION

Dividends received from November 1, 1931, to May 31, 1934

	Total	2 months ended Dec. 31, 1931	Year ended Dec. 31, 1932	Year ended Dec. 31, 1933	5 months ended May 31, 1934
Argonaut Consolidated Mining Company	\$328.30				\$328.30
Chrysler Corp.	32,192.50		\$20,506.15	\$9,477.00	2,118.25
Columbia Gas & Electric Co. Conv. 5%					
Preference	3.75				3.75
Ecuadorian Corp., Ltd.	1,776.51		1,333.80	217.00	225.71
Firestone Tire & Rubber Co.	375.00			275.00	100.00
Hudson Motor Car Co.	475.00		475.00		
National Sugar Refining Co.	2,042.06			1,221.04	821.04
Pathe Exchange—7% Bonds	2,730.00			1,365.00	1,365.00
Per Income Account—Exhibit "B"	\$39,923.14		\$22,405.05	\$12,555.04	\$4,963.00

PLAINTIFFS' EXHIBIT 55

STANDARD OIL COMPANY, INDIANA

Dividend No. 83. Check No. 801-778. Pay Four Hundred Four and 25/100 Dollars, \$400.25, 1,617, Chicago, Illinois, to the order of Chemical Bank & Trust Co., 165 Broadway, New York City. 182-2838. Credit Acct. of John T. Smith -1- Mar. 15, 1933. Payable to stock of record Feb. 15, 1933. At the rate of \$0.25 per share. Standard Oil Company, C. J. Barnsull, Treasurer.

To First National Bank, Chicago, Illinois. 2-1.

Payable at First National Bank, New York. 1-65.

Perforated stamp—Paid 3-18-33. 2—Paid-1. 3-22-33. Endorsements as follows: Credited to account of within named payee. Absence of endorsement guaranteed. Chemical Bank & Trust Company, 73rd St. Branch, Successor to United States Mortgage & Trust Company.

(Rubber stamp of receiving bank.)

STANDARD OIL COMPANY, INDIANA

Dividend No. 84. Check No. 901-816. Pay Four Hundred and 25/100 Dollars, \$404.25, 1,617, Chicago, Illinois, to the order of Chemical Bank & Trust Co., 165 Broadway, New York City. 182-2838. Credit Acct. of John T. Smith -1- Jun. 15, 1933. Payable to stock of record May 15, 1933. At the rate of \$0.25 per share. Standard Oil Company, C. J. Barnsull, Treasurer.

To First National Bank, Chicago, Illinois. 2-1.

Payable at First National Bank, New York. 1-65.

Perforated stamp—Paid 6-16-33. 2—Paid-1. 6-19-33. Endorsements as follows: Credited to the account of the within-named payee. Chemical Bank & Trust Company, Mail Teller.

(Rubber stamp of receiving bank.)

679 STANDARD OIL COMPANY, INDIANA

Dividend No. 85. Check No. 999-948. Pay * 384 Dollars 04 cts *, 1,617, Chicago, Illinois, to the order of Chemical Bank & Trust Co., 165 Broadway, New York City. 182-2838. Credit Acct. of John T. Smith -1-. Sep. 15, 1933. Payable to stock of record, Aug. 15, 1933. At the rate of \$0.25 per share. Standard Oil Company, C. J. Barnsull, Treasurer.

To First National Bank, Chicago, Illinois. 2-1.

Payable at First National Bank, New York. 1-65.

Perforated stamp—Paid 9-19-33. 2-Paid-1. 9-22-33. Endorsements as follows: Credited to the account of the within named payee. Chemical Bank & Trust Company, Mail Teller.

(Rubber stamp of receiving bank.)

680 STANDARD OIL COMPANY, INDIANA

Dividend No. 86. Check No. 97-624. Pay * 384 Dollars 04 cts *, 1,617, Chicago, Illinois, to the order of Chemical Bank & Trust Co., 165 Broadway, New York City. 182-2838. Credit Acct. of John T. Smith -1-. Dec. 15, 1933. Payable to stock of record, Nov. 15, 1933. At the rate of \$0.25 per share. Standard Oil Company, C. J. Barnsull, Treasurer.

To First National Bank, Chicago, Illinois. 2-1.

Payable at First National Bank, New York. 1-65.

Perforated stamp—Paid 12-16-33. Endorsements as follows: Credited to the account of the within named payee. Chemical Bank & Trust Company, Mail Teller.

(Rubber stamp of receiving bank.)

681 STANDARD OIL COMPANY, INDIANA

Dividend No. 87. Check No. 193-983. Pay Four Hundred Four and 25/100 Dollars, \$404.25, 1,617, Chicago, Illinois, to the order of Chemical Bank & Trust Co., 165 Broadway, New York City. 182-2838. Credit Acct. of John T. Smith -1-. Mar. 15, 1934. Payable to stock of record, Feb. 15, 1934. At the rate of \$0.25 per share. Standard Oil Company, C. J. Barnsull, Treasurer.

To First National Bank, Chicago, Illinois. 2-1.

Payable at First National Bank, New York. 1-65.

Perforated stamp—Paid 3-16-34. 2-Paid-1. 3-19-34. Endorsements as follows: Credited to account of within named payee. Absence of endorsement guaranteed Chemical Bank & Trust Company, 73rd St. Branch. Successor to United States Mortgage & Trust Company.

(Rubber stamp of receiving bank.)

682 STANDARD OIL COMPANY, INDIANA

Dividend No. 88. Check No. 288-220. Pay Four Hundred Four and 25/100 Dollars, \$404.25, 1,617, Chicago, Illinois, to the order of

Chemical Bank & Trust Co., 165 Broadway, New York City. 182-2838. Credit Acct. of John T. Smith -1-. Jun. 15, 1934. Payable to stock of record, May 15, 1934. At the rate of \$0.25 per share. Standard Oil Company, C. J. Barnsull, Treasurer.

To First National Bank, Chicago, Illinois. 2-1.

Payable at First National Bank, New York 1-65.

Perforated stamp—Paid 6-18-34. 2-Paid-1. 6-21-34. Endorsements as follows: Credited to the account of the within named payee. Chemical Bank & Trust Company, Mail Teller.

(Rubber stamp of receiving bank.)

683

STANDARD OIL COMPANY, INDIANA

Dividend No. 89. Check No. 381-470. Pay Four Hundred Four and 25/100 Dollars, \$404.25, 1,617, Chicago, Illinois, to the order of Chemical Bank & Trust Co., 165 Broadway, New York City. 182-2838. Credit Acct. to John T. Smith -1-. Sept. 15, 1934. Payable to stock of record, Aug. 15, 1934. At the rate of \$0.25 per share. Standard Oil Company, C. J. Barnsull, Treasurer.

To First National Bank, Chicago, Illinois. 2-1.

Payable at First National Bank, New York. 1-65.

Perforated stamp—Paid 9-18-34. 2-Paid-1. 9-21-34. Endorsements as follows: Credited to account of within named payee. Absence of endorsement guaranteed. Chemical Bank & Trust Company, 73rd St. Branch. Successor to United States Mortgage & Trust Company. Credited to the account of the within named payee. Chemical Bank & Trust Company, Mail Teller.

(Rubber stamp of receiving bank.)

684

STANDARD OIL COMPANY, INDIANA

Dividend No. 90. Check No. 474-009. Pay Four Hundred Four and 25/100 Dollars, \$404.25, 1,617, Chicago, Illinois, to the order of Chemical Bank & Trust Co., 165 Broadway, New York City. 182-2838. Credit Acct. of John T. Smith -1-. Dec. 15, 1934. Payable to stock of record, Nov. 15, 1934. At the rate of \$0.25 per share. Standard Oil Company, C. J. Barnsull, Treasurer.

To First National Bank, Chicago, Illinois. 2-1.

Payable at First National Bank, New York. 1-65.

Perforated stamp—Paid 12-20-34. 2-Paid-1. 12-24-34. Endorsements as follows: Credited to account of within-named payee. Absence of endorsement guaranteed. Chemical Bank & Trust Company, 73rd St. Branch. Successor to United States Mortgage & Trust Company. Credited to the account of the within-named payee. Chemical Bank & Trust Company, Mail Teller.

(Rubber stamp of receiving bank.)

685

STANDARD OIL COMPANY, INDIANA

Dividend No. 91. Check No. 566-321. Pay Four Hundred Four and 25/100 Dollars, \$404.25, 1,617, Chicago, Illinois, to the order of

Chemical Bank & Trust Co., 165 Broadway, New York City. 182-2838. Credit Acct. of John T. Smith -1-. Mar. 15, 1935. Payable to stock of record, Feb. 15, 1935. At the rate of \$0.25 per share. Standard Oil Company, C. J. Barnsull, Treasurer.

To First National Bank, Chicago, Illinois. 2-1.

Payable at First National Bank, New York. 1-65.

Perforated stamp—Paid 3-16-35. 2—Paid-1. 3-20-35. Endorsements as follows: Credited to the account of the within-named payee. Chemical Bank & Trust Company, Mail Teller.

(Rubber stamp of receiving bank.)

686 STANDARD OIL COMPANY, INDIANA

Dividend No. 92. Check No. 658-294. Pay Four Hundred Four and 25/100 Dollars, \$404.25, 1,617, Chicago, Illinois, to the order of Chemical Bank & Trust Co., 165 Broadway, New York City. 182-2838. Credit Acct. of John T. Smith -1-. Jun. 15, 1935. Payable to stock of record, May 15, 1935. At the rate of \$0.25 per share. Standard Oil Company, C. J. Barnsull, Treasurer.

To First National Bank, Chicago, Illinois. 2-1.

Payable at First National Bank, New York. 1-65.

Perforated stamp—Paid 6-18-35. 2—Paid-1. 6-21-35. Endorsements as follows: Credited to the account of the within named payee. Chemical Bank & Trust Company, Mail Teller.

(Rubber stamp of receiving bank.)

687 STANDARD OIL COMPANY, INDIANA

Dividend No. 93. Check No. 753-372. Pay Four Hundred Four and 25/100 Dollars, \$404.25, 1,617, Chicago, Illinois, to the order of Chemical Bank & Trust Co., 165 Broadway, New York City. 182-2838. Credit Acct. of John T. Smith -1-. Sep. 16, 1935. Payable to stock of record, Aug. 16, 1935. At the rate of \$0.25 per share. Standard Oil Company, C. J. Barnsull, Treasurer.

To First National Bank, Chicago, Illinois. 2-1.

Payable at First National Bank, New York. 1-65.

Perforated stamp—Paid 9-17-35. 2—Paid-1. 9-20-35. Endorsements as follows: Credited to account of within named payee. Absence of endorsement guaranteed. Chemical Bank & Trust Company, 73rd St. Branch. Successor to United States Mortgage & Trust Company. Credited to the account of the within named payee. Chemical Bank & Trust Company, Mail Teller.

(Rubber stamp of receiving bank.)

688 STANDARD OIL COMPANY, INDIANA

Dividend No. 94. Check No. 848-311. Pay Four Hundred Four and 25/100 Dollars, \$404.25, 1,617, Chicago, Illinois, to the order of Chemical Bank & Trust Co., 165 Broadway, New York City.

182-2838. Credit Acct. of John T. Smith -1-. Dec. 16, 1935. Payable to stock of record, Nov. 16, 1935. At the rate of \$0.25 per share. Standard Oil Company, C. J. Barnsull, Treasurer.

To First National Bank, Chicago, Illinois. 2-1.

Payable at First National Bank, New York. 1-65.

Perforated stamp—Paid 12-17-35. 2-Paid-1. 12-20-35. Endorsements as follows: Credited to the account of the within named payee. Chemical Bank & Trust Company, Mail Teller.
(Rubber stamp of receiving bank.)

689

STANDARD OIL COMPANY, INDIANA

Dividend No. 95. Check No. 941-853. Pay Four Hundred Four and 25/100 Dollars, \$404.25, 1,617, Chicago, Illinois, to the order of Chemical Bank & Trust Co., 165 Broadway, New York City. 182-2838. Credit Acct. of John T. Smith -1-. Mar. 16, 1936. Payable to stock of record, Feb. 15, 1936. At the rate of \$0.25 per share. Standard Oil Company, C. J. Barnsull, Treasurer.

To First National Bank, Chicago, Illinois. 2-1.

Payable at First National Bank, New York. 1-65.

Perforated stamp—Paid 3-17-36. 2-Paid-1. 3-20-36. Endorsements as follows: Credited to the account of the within named payee. Chemical Bank & Trust Company, Mail Teller.
(Rubber stamp of receiving bank.)

690

STANDARD OIL COMPANY, INDIANA

Dividend No. 96. Check No. 34-750. Pay Six Hundred Forty-six and 80/100 Dollars, \$646.80, 1,617, Chicago, Illinois, to the order of Chemical Bank & Trust Co., 165 Broadway, New York City. 182-2838. Credit Acct. of John T. Smith -1-. Jun. 15, 1936. Payable to stock of record, May 15, 1936. At the rate of \$0.40 per share. Standard Oil Company, C. J. Barnsull, Treasurer.

To First National Bank, Chicago, Illinois. 2-1.

Payable at First National Bank, New York. 1-65.

Perforated stamp—Paid 6-17-36. 2-Paid-1. 6-20-36.

(Rubber stamp of receiving bank.)

691

STANDARD OIL COMPANY, INDIANA

126-225.

Dividend No. 97. Check No. R2-102.

Pay Eight Hundred Eight and 50/100 Dollars, \$808.50. 1,617, Chicago, Illinois, to the order of Chemical Bank & Trust Co., 165 Broadway, New York, N. Y. Credit Acct. of John T. Smith -1-. Sep. 15, 1936. Payable to stock of record, Aug. 15, 1936. At the rate of \$0.50 per share. Standard Oil Company, A. F. Juthmann, Attorney.

To First National Bank, Chicago, Illinois. 2-1.

Payable at First National Bank, New York. 1-65.

Perforated stamp—Paid 10-23-36. 2—Paid-1. 10-26-36. Endorsements as follows: Credited to the account of John T. Smith. Chemical Bank & Trust Company (Illegible), Assistant Comptroller. (Rubber stamps of collecting and receiving banks.)

692

STANDARD OIL COMPANY, INDIANA

Dividend No. 98. Check No. 218-126. Pay Two Thousand Twenty-one and 25/100 Dollars, \$2,021.25, 1,617, Chicago, Illinois, to the order of Chemical Bank & Trust Co., 165 Broadway, New York City. 310-2838. Credit Acct. of John T. Smith -1-. Dec. 15, 1936. Payable to stock of record, Nov. 16, 1936. At the rate of \$1.25 per share. Standard Oil Company, C. J. Barnsull, Treasurer.

To First National Bank, Chicago, Illinois. 2-1.

Payable at First National Bank, New York. 1-65.

Perforated stamp—Paid 12-16-36. 2—Paid-1. 12-19-36. Endorsements as follows: Credited to the account of the within named payee. Chemical Bank & Trust Company, Mail Teller. (Rubber stamp of receiving bank.)

693

STANDARD OIL COMPANY, INDIANA

Dividend No. 99. Check No. 309-941. Pay Six Hundred Forty-six and 80/100 Dollars, \$646.80, 1,617, Chicago, Illinois, to the order of Chemical Bank & Trust Co., 165 Broadway, New York City. 310-2838. Credit Acct. of John T. Smith -1-. Mar. 15, 1937. Payable to stock of record, Feb. 15, 1937. At the rate of \$0.40 per share. Standard Oil Company, C. J. Barnsull, Treasurer.

To First National Bank, Chicago, Illinois. 2-1.

Payable at First National Bank, New York. 1-65.

(Rubber stamp—F. B. D. Mar. 17, 1938.) Perforated stamp—Paid 3-15-37. 2—Paid-1. 3-17-37. (Rubber stamp of receiving bank.)

694

STANDARD OIL COMPANY, INDIANA

Dividend No. 100. Check No. 401-839. Pay Six Hundred Forty-six and 80/100 Dollars, \$646.80, 1,617, Chicago, Illinois, to the order of Chemical Bank & Trust Co., 165 Broadway, New York City. 310-2838. Credit Acct. of John T. Smith -1-. Jun. 15, 1937. Payable to stock of record, May 15, 1937. At the rate of \$0.40 per share. Standard Oil Company, C. J. Barnsull, Treasurer.

To First National Bank, Chicago, Illinois. 2-1.

Payable at First National Bank, New York. 1-65.

Perforated stamp—Paid 6-17-37. 2—Paid-1. 6-21-37. Endorsements as follows: Credited to the account of the within named payee. Chemical Bank & Trust Company, Mail Teller. (Rubber stamp of receiving bank.)

695

STANDARD OIL COMPANY, INDIANA

Dividend No. 101. Check No. 494-527. Pay Eight Hundred Eight and 50/100 Dollars, \$808.50, 1,617, Chicago, Illinois, to the order of Chemical Bank & Trust Co., 165 Broadway, New York City. 310-2838. Credit Acct. of John T. Smith -1-. Sep. 15, 1937. Payable to stock of record, Aug. 16, 1937. At the rate of \$0.50 per share. Standard Oil Company, C. J. Barnsull, Treasurer.

To First National Bank, Chicago, Illinois. 2-1.

Payable at First National Bank, New York. 1-65.

Perforated stamp—Paid 9-16-37. 2-Paid-1. 9-20-37. Endorsements as follows: Credited to the account of the within named payee. Chemical Bank & Trust Company, Mail Teller.

(Rubber stamp of receiving bank.)

696

PLAINTIFFS' EXHIBIT 56

Telephone 6500 Circle.

JOHN THOMAS SMITH,
ATTORNEY AND COUNSELLOR AT LAW,
224 WEST 57TH STREET,
NEW YORK, June 14th, 1936.

MR. FRANK BASSETT,
80 Broadway, New York City.

DEAR SIR: Pursuant to the agreement dated June 20, 1925, between you and John T. Smith, and to the notice given you of the intention to exercise at this time the option under the agreement by the undersigned as assignee of said Smith, in respect of 26,477 shares of the common stock of Chrysler Corporation in exchange for 5,005 shares of the preferred stock of the same corporation, the undersigned hereby delivers to you out of the shares of the preferred stock of Chrysler Corporation held by you as collateral security under the said agreement of June 20, 1925, certificates for 5,005 shares of said preferred stock endorsed in blank for transfer and authorizes you to keep the same as your property absolutely, hereby surrendering and releasing all right, title and interest in and to said 5,005 shares in exchange for which the undersigned has received from you 26,477 shares of common stock of Chrysler Corporation out of said common stock deposited by you with the said Smith under the agreement of June 20, 1925.

Very truly yours,

INNISFAIR CORPORATION,
By ANTHONY J. RUSSO,
Vice President.

JTS/HM.

PLAINTIFFS' EXHIBIT 57

In consideration of Ten Dollars (\$10.00) and other valuable considerations, receipt whereof is hereby acknowledged, the undersigned hereby agrees to sell and deliver at any time and from time to time on or before June 20th, 1927, unto John T. Smith, upon three (3) days' notice, Nine Thousand Three Hundred and Seventy (9,370) Shares of the Common Stock of Chrysler Corporation, a corporation of Delaware, or any part thereof, in exchange for Seven Thousand and Eighty-Five (7,085) Shares of the Preferred Stock, Series A, of said Chrysler Corporation or any part thereof, pro rata.

As collateral security therefor the undersigned has deposited with the said Smith certificates of deposit under Maxwell Motor Corporation Plan and Agreement dated April 15th, 1925, representing Nine Thousand Three Hundred and Seventy (9,370) Shares of the Class B Stock of said Maxwell Motor Corporation, receipt whereof is hereby acknowledged, and the said Smith has likewise deposited with the undersigned as collateral security certificates of deposit under said Plan and Agreement representing Seven Thousand and Eighty-Five (7,085) Shares of the Class A Stock of said Maxwell Motor Corporation, receipt whereof is hereby acknowledged by the undersigned.

Upon the consummation of said plan of reorganization the Preferred Stock Series A and Common Stock of the Chrysler Corporation received in exchange for said certificates of deposit respectively shall be substituted for them as the collateral hereunder:

All dividends and rights, if any, shall belong, and be paid to the respective owners of the deposited collateral. Deliveries hereunder may be made by either party from the deposited collateral. If and to the extent that said Smith shall make delivery out of Preferred Stock, Series A, of Chrysler Corporation held hereunder as collateral, there shall be surrendered to Smith one-tenth of a share of Common Stock of the Chrysler Corporation held hereunder by the undersigned as collateral for each share of said Preferred Stock, Series A, delivery of which shall so have been made by said Smith. If and to the extent that delivery hereunder is made by either party hereunder out of stock not deposited hereinunder as collateral, a corresponding amount of collateral deposited by him hereunder shall be released.

Deliveries hereunder shall be made at 80 Broadway, New York City.

This agreement shall be void if said plan of reorganization is abandoned or for any reason is not consummated before January 2nd, 1926. Upon the termination of this agreement the parties agree to return to one another the collateral remaining on deposit.

In witness whereof, the undersigned has hereunto set his hand and affixed his seal at the City of New York this 20th day of June 1925.

FRANK BASSETT. [L. S.]

PLAINTIFFS' EXHIBIT 58

F. BASSETT,

80 BROADWAY,

New York, June 14, 1926.

INNISFAIR CORPORATION,

224 West 57th Street, New York City.

GENTLEMEN: Referring to the agreement between John Thomas Smith and the undersigned, dated June 20th, 1925, and the notice of exercise of the option contained in said agreement to the extent that you wish to take up 28,479 shares of common stock of Chrysler Corporation in exchange for 5,005 shares of preferred stock of Chrysler Corporation, I hereby authorize you out of the shares of common stock of Chrysler Corporation deposited with said Smith as collateral security under said agreement, to keep, as assignee of John Thomas Smith, as your property absolutely certificates representing 26,477 shares of said common stock, and I have handed to said Smith 2,002 shares of common stock of Chrysler Corporation, being the proportionate amount of common stock of Chrysler Corporation which I received when certificates of deposit for Maxwell "A" stock deposited by him under the agreement as such collateral security were exchanged by me for Chrysler Corporation preferred and common stock, as provided by the agreement. I acknowledge the receipt from you, as assignee of John Thomas Smith, of 5,005 shares of preferred stock of Chrysler Corporation out of said stock deposited by him as collateral under the agreement.

Very truly yours,

F. BASSETT.

700

DEFENDANT'S EXHIBIT A

Income Tax Return of John Thomas Smith for 1931.

(PHOTOPRINTS)

[For the Convenience of Court and Counsel this Exhibit (Photostatic Copies) are Bound in on the Opposite Page.]

702

DEFENDANT'S EXHIBIT C

Income Tax Return of John Thomas Smith for 1929.

(PHOTOPRINTS)

[For the Convenience of Court and Counsel this Exhibit (Photostatic Copies) are Bound in on the Opposite Page.]

Defendant's Exhibit A.

United States



of America

TREASURY DEPARTMENT
WASHINGTON

January 8, 1938

IN WITNESS WHEREOF, I have hereunto set my hand,
and caused the seal of the Treasury Department to be
affixed, on the day and year first above written.

on file in this Department.



IN WITNESS WHEREOF, I have hereunto set my hand,
and caused the seal of the Treasury Department to be
affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

W. A. Birgefeld
W. A. Birgefeld

Chief Clerk, Treasury Department.

INDIVIDUAL INCOME TAX RETURN

PREPARED BY THE TAXPAYER OR BY A PERSON IN HIS BEHALF

AND SHOWING THE TAXPAYER'S STATUS, RESIDENCE, AND PLACE OF BUSINESS

For Calendar Year 1931

The Taxpayer is the owner of the property shown on the Schedule of Assets and Liabilities

and is not a partner in any partnership

Taxpayer's Name **JOHN EDWARD SMITH**

Address **1115 FIFTH AVENUE**

City **NEW YORK** State **NEW YORK** Zip **NEW YORK**

Occupation **Engineer**

On the Date of this Return

2706

30341

Signature of Taxpayer

W. Y. RK

1. Are you a citizen or resident of the United States? **Yes**
 If not, are you a resident alien? **Third Dist. N.Y.**

2. Is this a joint return? **No**
 3. State name of husband or wife **Mary A. Smith**
 4. State name of husband or wife and the Collector's office where it was sent **Third Dist. N.Y.**

5. Were you married on the last day of your taxable year? **Yes**
 6. If yes, was your wife living with you on the last day of your taxable year? **Yes**
 7. If yes, state in which jurisdiction you lived during the year, and date and month of divorce.
 8. How many children under 18 years of age or children of all ages were receiving their full support from you on the last day of your taxable year? **1**

INCOME
 1. Salaries, Wages, Commissions, etc. (State name and address of employer)
General Motors Corp. New York City
Argonaut Mining Co. San Francisco, Cal.
Argonaut Consolidated Mining Co. New York City
White Knob Copper & Development Co. New York City
 2. Income from Business or Profession. (State Schedule A)
 3. Interest on Bank Deposits, Mutual Corporation Bonds, etc. (except interest on taxable investment bonds)
 4. Interest on Tax-free Government Bonds Upon Which a Tax was Paid at Maturity
 5. Income from Partnerships. (Give name and address)
 6. Income from Fiduciaries. (Give name and address)

77 25000
 6 00000
 2 50000
 02500
 1 66074
 92042

7. Bonds and Repurchases. (State Schedule B)
 8. Dividends from Stocks of Real Estate, Mining, Bank, etc. (State Schedule C)
 9. Dividends from Stocks of Other Corporations
 10. Other Income (including dividends on stock of foreign corporations)
 11. Directors' Fees
 12. General Motors Corp. Bonus Stock

52 66721
 25 45004
 1 20000
 5 87500

13. From Items 1 to 12
 14. Interest Paid
 15. Taxes Paid (Schedule D)
 16. Loans by Fire, Storm, etc. (Schedule E)
 17. Gift Taxes. (Schedule F)
 18. Contributions. (Schedule G)
 19. Other Deductions Authorized by Law. (Schedule H)

37 85401
 12 42554
 4 85200

RECEIVED
 INTERNAL REVENUE
 NOV 10 1931

U.S. DEPT. OF TAX APPEALS
 NOV 13 1931
 RECEIVED
 NOV 14 1931

117 88450

White Knob Copper & Development Co., New York City

1. Income from Business or Profession. (See Section 1)
2. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free government bonds)
3. Interest on Tax-free Government Bonds Upon Which a Tax is Paid at Maturity
4. Income from Partnerships. (See Section 1)
5. Income from Fiduciaries. (See Section 1)

62500

1 66074

92441

U.S. MAIL TAX APPLICANT
 FILED
 1935
 RECEIVED
 1935

6. Dividends and Royalties. (See Section 1)
7. Dividends from Subsidiary of Stock of Subsidiary, etc. (See Section 1)
8. Dividends from Subsidiary of Subsidiary, etc. (See Section 1)
9. Dividends from Subsidiary of Subsidiary, etc. (See Section 1)
10. Dividends from Subsidiary of Subsidiary, etc. (See Section 1)
11. Other Income (including dividends on stock of foreign corporations)

RECEIVED
 INTERNAL REVENUE
 NOV 10 1935
 RECEIVED
 TELEPHONE

320 66074

320 45044

1 50000

1 07000

12. Directors' Fees
13. General Motors Corp. Common Stock

Total Income as shown on 1 to 13

115 00000

DEDUCTIONS

14. Interest Paid
15. Taxes Paid. (See Section 1)
16. Losses by Fire, Storm, etc. (See Section 1)
17. Bad Debts. (See Section 1)
18. Charitable Contributions. (See Section 1)
19. Other Deductions Authorized by Law. (See Section 1)
20. Total Deductions as shown on 14 to 19
21. Net Income (Less 20 minus 14 to 19)

37 00001

15 42354

6 00000

15 00000

15 00000

EXEMPTED INCOME CREDIT

COMPUTATION OF TAX (See Section 1)

22. Normal Income Tax over 20% rate	3000000	23. Net Income (Less 20 above)	66074	24. Normal Tax (15% of Item 22)	1 00000
25. Less Personal Exemptions and Credit for Dependents	300000	24. Less: Bonds (Interest)		25. Normal Tax (5% of Item 22)	1 00000
26. Excess (Less 25 minus 24)	9810000	25. Dividends (Less 25 above)	45044	26. Normal Tax (5% of Item 22)	1 00000
27. Excess (Less 26 minus 25)	450000	26. Credit for Tax	40000	27. Normal Tax (5% of Item 22)	1 00000
28. Excess (Less 27 minus 26)	400000	27. Federal Tax	30000	28. Total Tax (Less 27 minus 26)	1 00000
29. Excess (Less 28 minus 27)	100000	28. Total of Items 22 to 28	3000000	29. Total Tax (Less 27 minus 26)	1 00000
30. Normal Tax (15% of Item 28)	450000	29. Excess (Less 28 minus 27)		30. Total Tax (Less 27 minus 26)	1 00000
31. Normal Tax (5% of Item 28)	225000	30. Excess (Less 28 minus 27)		31. Total Tax (Less 27 minus 26)	1 00000
32. Normal Tax (5% of Item 28)	225000	31. Excess (Less 28 minus 27)		32. Total Tax (Less 27 minus 26)	1 00000
33. Excess (Less 32 minus 31)	100000	32. Excess (Less 28 minus 27)		33. Total Tax (Less 27 minus 26)	1 00000
34. Excess (Less 33 minus 32)	100000	33. Excess (Less 28 minus 27)		34. Total Tax (Less 27 minus 26)	1 00000
35. Excess (Less 34 minus 33)	100000	34. Excess (Less 28 minus 27)		35. Total Tax (Less 27 minus 26)	1 00000
36. Excess (Less 35 minus 34)	100000	35. Excess (Less 28 minus 27)		36. Total Tax (Less 27 minus 26)	1 00000
37. Excess (Less 36 minus 35)	100000	36. Excess (Less 28 minus 27)		37. Total Tax (Less 27 minus 26)	1 00000
38. Excess (Less 37 minus 36)	100000	37. Excess (Less 28 minus 27)		38. Total Tax (Less 27 minus 26)	1 00000
39. Excess (Less 38 minus 37)	100000	38. Excess (Less 28 minus 27)		39. Total Tax (Less 27 minus 26)	1 00000
40. Excess (Less 39 minus 38)	100000	39. Excess (Less 28 minus 27)		40. Total Tax (Less 27 minus 26)	1 00000
41. Excess (Less 40 minus 39)	100000	40. Excess (Less 28 minus 27)		41. Total Tax (Less 27 minus 26)	1 00000
42. Excess (Less 41 minus 40)	100000	41. Excess (Less 28 minus 27)		42. Total Tax (Less 27 minus 26)	1 00000
43. Excess (Less 42 minus 41)	100000	42. Excess (Less 28 minus 27)		43. Total Tax (Less 27 minus 26)	1 00000
44. Excess (Less 43 minus 42)	100000	43. Excess (Less 28 minus 27)		44. Total Tax (Less 27 minus 26)	1 00000
45. Excess (Less 44 minus 43)	100000	44. Excess (Less 28 minus 27)		45. Total Tax (Less 27 minus 26)	1 00000
46. Excess (Less 45 minus 44)	100000	45. Excess (Less 28 minus 27)		46. Total Tax (Less 27 minus 26)	1 00000
47. Excess (Less 46 minus 45)	100000	46. Excess (Less 28 minus 27)		47. Total Tax (Less 27 minus 26)	1 00000
48. Excess (Less 47 minus 46)	100000	47. Excess (Less 28 minus 27)		48. Total Tax (Less 27 minus 26)	1 00000
49. Excess (Less 48 minus 47)	100000	48. Excess (Less 28 minus 27)		49. Total Tax (Less 27 minus 26)	1 00000
50. Excess (Less 49 minus 48)	100000	49. Excess (Less 28 minus 27)		50. Total Tax (Less 27 minus 26)	1 00000
51. Excess (Less 50 minus 49)	100000	50. Excess (Less 28 minus 27)		51. Total Tax (Less 27 minus 26)	1 00000
52. Excess (Less 51 minus 50)	100000	51. Excess (Less 28 minus 27)		52. Total Tax (Less 27 minus 26)	1 00000
53. Excess (Less 52 minus 51)	100000	52. Excess (Less 28 minus 27)		53. Total Tax (Less 27 minus 26)	1 00000
54. Excess (Less 53 minus 52)	100000	53. Excess (Less 28 minus 27)		54. Total Tax (Less 27 minus 26)	1 00000
55. Excess (Less 54 minus 53)	100000	54. Excess (Less 28 minus 27)		55. Total Tax (Less 27 minus 26)	1 00000
56. Excess (Less 55 minus 54)	100000	55. Excess (Less 28 minus 27)		56. Total Tax (Less 27 minus 26)	1 00000
57. Excess (Less 56 minus 55)	100000	56. Excess (Less 28 minus 27)		57. Total Tax (Less 27 minus 26)	1 00000
58. Excess (Less 57 minus 56)	100000	57. Excess (Less 28 minus 27)		58. Total Tax (Less 27 minus 26)	1 00000
59. Excess (Less 58 minus 57)	100000	58. Excess (Less 28 minus 27)		59. Total Tax (Less 27 minus 26)	1 00000
60. Excess (Less 59 minus 58)	100000	59. Excess (Less 28 minus 27)		60. Total Tax (Less 27 minus 26)	1 00000
61. Excess (Less 60 minus 59)	100000	60. Excess (Less 28 minus 27)		61. Total Tax (Less 27 minus 26)	1 00000
62. Excess (Less 61 minus 60)	100000	61. Excess (Less 28 minus 27)		62. Total Tax (Less 27 minus 26)	1 00000
63. Excess (Less 62 minus 61)	100000	62. Excess (Less 28 minus 27)		63. Total Tax (Less 27 minus 26)	1 00000
64. Excess (Less 63 minus 62)	100000	63. Excess (Less 28 minus 27)		64. Total Tax (Less 27 minus 26)	1 00000
65. Excess (Less 64 minus 63)	100000	64. Excess (Less 28 minus 27)		65. Total Tax (Less 27 minus 26)	1 00000
66. Excess (Less 65 minus 64)	100000	65. Excess (Less 28 minus 27)		66. Total Tax (Less 27 minus 26)	1 00000
67. Excess (Less 66 minus 65)	100000	66. Excess (Less 28 minus 27)		67. Total Tax (Less 27 minus 26)	1 00000
68. Excess (Less 67 minus 66)	100000	67. Excess (Less 28 minus 27)		68. Total Tax (Less 27 minus 26)	1 00000
69. Excess (Less 68 minus 67)	100000	68. Excess (Less 28 minus 27)		69. Total Tax (Less 27 minus 26)	1 00000
70. Excess (Less 69 minus 68)	100000	69. Excess (Less 28 minus 27)		70. Total Tax (Less 27 minus 26)	1 00000
71. Excess (Less 70 minus 69)	100000	70. Excess (Less 28 minus 27)		71. Total Tax (Less 27 minus 26)	1 00000
72. Excess (Less 71 minus 70)	100000	71. Excess (Less 28 minus 27)		72. Total Tax (Less 27 minus 26)	1 00000
73. Excess (Less 72 minus 71)	100000	72. Excess (Less 28 minus 27)		73. Total Tax (Less 27 minus 26)	1 00000
74. Excess (Less 73 minus 72)	100000	73. Excess (Less 28 minus 27)		74. Total Tax (Less 27 minus 26)	1 00000
75. Excess (Less 74 minus 73)	100000	74. Excess (Less 28 minus 27)		75. Total Tax (Less 27 minus 26)	1 00000
76. Excess (Less 75 minus 74)	100000	75. Excess (Less 28 minus 27)		76. Total Tax (Less 27 minus 26)	1 00000
77. Excess (Less 76 minus 75)	100000	76. Excess (Less 28 minus 27)		77. Total Tax (Less 27 minus 26)	1 00000
78. Excess (Less 77 minus 76)	100000	77. Excess (Less 28 minus 27)		78. Total Tax (Less 27 minus 26)	1 00000
79. Excess (Less 78 minus 77)	100000	78. Excess (Less 28 minus 27)		79. Total Tax (Less 27 minus 26)	1 00000
80. Excess (Less 79 minus 78)	100000	79. Excess (Less 28 minus 27)		80. Total Tax (Less 27 minus 26)	1 00000
81. Excess (Less 80 minus 79)	100000	80. Excess (Less 28 minus 27)		81. Total Tax (Less 27 minus 26)	1 00000
82. Excess (Less 81 minus 80)	100000	81. Excess (Less 28 minus 27)		82. Total Tax (Less 27 minus 26)	1 00000
83. Excess (Less 82 minus 81)	100000	82. Excess (Less 28 minus 27)		83. Total Tax (Less 27 minus 26)	1 00000
84. Excess (Less 83 minus 82)	100000	83. Excess (Less 28 minus 27)		84. Total Tax (Less 27 minus 26)	1 00000
85. Excess (Less 84 minus 83)	100000	84. Excess (Less 28 minus 27)		85. Total Tax (Less 27 minus 26)	1 00000
86. Excess (Less 85 minus 84)	100000	85. Excess (Less 28 minus 27)		86. Total Tax (Less 27 minus 26)	1 00000
87. Excess (Less 86 minus 85)	100000	86. Excess (Less 28 minus 27)		87. Total Tax (Less 27 minus 26)	1 00000
88. Excess (Less 87 minus 86)	100000	87. Excess (Less 28 minus 27)		88. Total Tax (Less 27 minus 26)	1 00000
89. Excess (Less 88 minus 87)	100000	88. Excess (Less 28 minus 27)		89. Total Tax (Less 27 minus 26)	1 00000
90. Excess (Less 89 minus 88)	100000	89. Excess (Less 28 minus 27)		90. Total Tax (Less 27 minus 26)	1 00000
91. Excess (Less 90 minus 89)	100000	90. Excess (Less 28 minus 27)		91. Total Tax (Less 27 minus 26)	1 00000
92. Excess (Less 91 minus 90)	100000	91. Excess (Less 28 minus 27)		92. Total Tax (Less 27 minus 26)	1 00000
93. Excess (Less 92 minus 91)	100000	92. Excess (Less 28 minus 27)		93. Total Tax (Less 27 minus 26)	1 00000
94. Excess (Less 93 minus 92)	100000	93. Excess (Less 28 minus 27)		94. Total Tax (Less 27 minus 26)	1 00000
95. Excess (Less 94 minus 93)	100000	94. Excess (Less 28 minus 27)		95. Total Tax (Less 27 minus 26)	1 00000
96. Excess (Less 95 minus 94)	100000	95. Excess (Less 28 minus 27)		96. Total Tax (Less 27 minus 26)	1 00000
97. Excess (Less 96 minus 95)	100000	96. Excess (Less 28 minus 27)		97. Total Tax (Less 27 minus 26)	1 00000
98. Excess (Less 97 minus 96)	100000	97. Excess (Less 28 minus 27)		98. Total Tax (Less 27 minus 26)	1 00000
99. Excess (Less 98 minus 97)	100000	98. Excess (Less 28 minus 27)		99. Total Tax (Less 27 minus 26)	1 00000
100. Excess (Less 99 minus 98)	100000	99. Excess (Less 28 minus 27)		100. Total Tax (Less 27 minus 26)	1 00000

AFFIDAVIT

I swear that the information furnished in this return is true and correct to the best of my knowledge and belief, and that I am not a defaulter under any Federal tax law, and that I am not a defaulter under any State or local tax law.

Signature: *H. V. Smith*
 Date: *Nov 10 1935*
 Address: *White Knob Copper & Development Co., New York City*

As provided herein, such return shall be considered "true and correct" as to the facts stated therein only if prepared by the taxpayer.

C-1

Schedule A - Income		3,928.00
1. Dividend income		
2. Interest on bonds		
3. Interest on notes		
4. Interest on mortgages		
5. Interest on other securities		
6. Interest on bank deposits		
7. Interest on other property		
8. Income from other sources		
9. Total income		3,928.00
10. Less: Deductions		
11. Total deductions		25.74
12. Net income		3,902.26
13. Less: State income tax		
14. Total state income tax		4.23
15. Net income after state income tax		3,898.03
16. Less: Federal income tax		
17. Total federal income tax		1.60
18. Net income after federal income tax		3,896.43

Schedule B - Capital Gains and Losses	
1. Short-term capital gains	
2. Long-term capital gains	
3. Short-term capital losses	
4. Long-term capital losses	
5. Net capital gain	

Schedule C - Profit from Sale of Real Estate, Stocks, Bonds, Etc.	
1. Description of property	
2. Date acquired	
3. Date sold	
4. Cost or other basis	
5. Selling price	
6. Profit or loss	
7. Total profit or loss	

Schedule D - Capital Net Gain or Loss from Sale of Assets Held More Than Two Years	
1. Description of property	
2. Date acquired	
3. Date sold	
4. Cost or other basis	
5. Selling price	
6. Profit or loss	
7. Total profit or loss	

Schedule E - Statement of Liberty Bonds and Other Obligations or Securities	
1. Description of security	
2. Amount owned	
3. Interest received	
4. Dividend received	
5. Total income	
6. Less: Deductions	
7. Net income	

Schedule F - Explanation of Deductions Claimed in Items 1, 24, 25, 27, and 28	
1. Real estate	22,141.40
2. New York State income (1936)	9,978.40
3. New York State income tax	100.00

SCHEDULE D - CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 6)

1. Date of Sale	2. Asset	3. Date Acquired	4. Adjusted Basis	5. Selling Price	6. Long-Term Capital Gain or Loss	7. Short-Term Capital Gain or Loss	8. Total Capital Gain or Loss

68,042.00
67,400.00

SCHEDULE E - INTEREST ON DEBENTURES AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 9)

1. Description of Security	2. Interest Received	3. Interest Due	4. Dividends Received	5. Dividends Due	6. Total Interest and Dividends
(a) Debentures of a State, Territory, or political subdivision thereof, or the District of Columbia					
(b) Securities issued under Public Law 405, or under such Act as amended, Treasury Note, and Treasury Certificate of Indebtedness					
(c) Liberty Bonds, and other obligations of United States issued on or before September 1, 1947, and obligations of U.S. government					
(d) Liberty Bonds and U.S. Bonds, Treasury Notes, and Treasury Securities					
(e) Treasury Note					

SCHEDULE F - EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 16, 17, AND 18

Item 16 - Taxes -

Fuel Estate	\$2,141.40
New York State Income (1950)	9,978.40
Auto License Fees	100.28
Club Dues & Admissions	204.48
Duty	888.85
Passage Tickets	50.00
Total	13,363.31

Item 17 - Contributions (See Schedule Attached) - \$4,833.10

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Date of Depreciation	2. Total Depreciation	3. Less: Amount of Depreciation Claimed in Schedules A and B	4. Amount of Depreciation Claimed in Schedules A and B	5. Amount of Depreciation Claimed in Schedules A and B	6. Amount of Depreciation Claimed in Schedules A and B	7. Amount of Depreciation Claimed in Schedules A and B

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 16

1. Date of Loss	2. Amount of Loss	3. Less: Amount of Loss Claimed in Schedules A and B	4. Amount of Loss Claimed in Schedules A and B	5. Amount of Loss Claimed in Schedules A and B	6. Amount of Loss Claimed in Schedules A and B	7. Amount of Loss Claimed in Schedules A and B

C-2

LOSS ON SALE OF SECURITIES

DECEMBER - 31 - 1931

National Baking Co. Common

Cost 7/16/30 100 shs.
Realized 1/16/31 100 "

\$432.50
488.50

Loss

144.00

Washington Pipe & Machinery Corp.

Cost 10/17/30 500 shs.
" 12/18/30 500 "

42,100.00
29,097.50
71,197.50

Realized 2/11/31 300 shs.
" 2/17/31 500 "

\$47,000.00
50,405.00
Profit

98,285.00

27,097.50

Caterpillar Tractor Company

Cost 9/25/30 69 shs.
" 9/25/30 500 "
" " 500 "
" 4/20/31 1,000 "
" 8/10/31 478 "
" 9/11-18/31 824 "
" 10/1/31 829 "

3,889.07
23,973.00
24,073.00
24,073.00
11,053.75
10,311.00
10,091.62

Realized 12/22/31 4,000 "

109,610.45
45,840.00

Loss

63,770.45

Paramount Public Corporation

Cost (See Attached analysis with respect to)
(Stock Dividends Received)
Realized 12/22/31

98,800.00
26,340.00

Loss

72,460.00

Underwood Elliott Fisher Co.

Cost 5/8/31 500 shs.
" 7/31/31 500 "

24,325.00
21,325.00
25,880.00
16,635.00

Realized 12/22/31 1,000 "

Loss

29,015.00

Industrial Rayon Corporation

Cost 3/13/30 100 shs.
" 10/20/30 2,000 "

6,820.00
80,300.00
90,180.00
51,451.00

Realized 12/19-20/31 2,100 "

Loss

38,659.00

American Radiator & Standard Sanitary Corp.

Cost 12/20/29 1,000 shs.
Realized 12/16/31 1,000 "

30,150.00
5,895.00

Loss

14,255.00

Anaconda Copper Mining Company

Cost 4/24/30 500 shs.
" 5/8/31 1,000 "
" 9/10/31 1,000 "
" 2,500 "

31,587.50
53,175.00
18,000.00
102,762.50

Loss-Dividends received 1930 paid from
Reserve for Depletion

Adjusted Cost
Realized 12/19/31 2,500 shs.

1,887.50
100,774.70
30,587.50

Loss

70,187.50

Fourth National Investors Corporation

Cost 12/20/29 200 shs.
Realized 12/16/31 200 "

6,230.00
3,099.88

Loss

3,130.12

Forward

174,343.27

National Baking Co. Common

Cost 7/16/30 100 shs.
Realized 1/16/31 100 "

\$632.50
488.50

Loss

144.00

Washington Post & Telegraph Corp.

Cost 10/17/30 500 shs.
" 12/18/30 500 "

42,100.00
29,387.50
71,187.50

Realized 2/11/31 500 shs.
" 2/17/31 500 "

29,387.50
29,387.50
Profit

98,285.00

27,097.50

Caterpillar Tractor Company

Cost 9/25/30 80 shs.
" 9/29/30 800 "

3,483.07

" 4/30/31 1,000 "

23,878.00

" 8/10/31 478 "

24,078.00

" 9/11-18/31 884 "

28,878.00

" 10/1/31 829 "

11,083.78

" 1,000 "

10,311.00

Realized 12/22/31 1,000 "

10,091.82

108,810.48

Loss

48,840.00

63,770.48

Paramount Public Corporation

Cost (See Attached analysis with respect to)
(Stock Dividends Received)

Realized 12/22/31

98,800.00

26,340.00

Loss

72,460.00

Underwood Elliott Fisher Co.

Cost 1/8/31 500 shs.
" 7/31/31 500 "

24,525.00

21,325.00

Realized 12/22/31 1,000 "

45,850.00

16,525.00

Loss

29,015.00

Industrial Rayon Corporation

Cost 3/13/30 100 shs.
" 10/20/30 2,000 "

9,820.00

80,300.00

Realized 12/19-20/31 2,100 "

90,180.00

51,451.00

Loss

38,669.00

American Radiator & Standard Sanitary Corp.

Cost 12/25/29 1,000 shs.
Realized 12/16/31 1,000 "

30,150.00

5,885.00

Loss

24,265.00

Anaconda Copper Mining Company

Cost 4/14/30 500 shs.
" 8/6/31 1,000 "

31,587.50

53,175.00

" 9/18/31 1,000 "

18,000.00

102,762.50

Less-Dividends received 1930 paid from

Reserve for Depletion

1,887.80

Adjusted Cost

100,774.70

Realized 12/19/31 2,500 shs.

30,587.50

Loss

70,187.20

Fourth National Investors Corporation

Cost 12/20/29 200 shs.
Realized 12/16/31 200 "

8,230.00

3,099.88

Loss

5,130.12

Forward

174,343.27

JOHN THOMAS SMITH

SCHEDULE C

LOSS ON SALE OF SECURITIES

DECEMBER - 31 - 1931

		Forward	174,343.27
Third National Investors Corporation			
Cost	12/20/30	200 shs.	5,217.50
Realized	12/16-19/31	200 "	2,595.06
		Loss	3,211.54
International Nickel Co. of Canada, Ltd.			
Cost	12/20/29	1,000 shs.	28,452.50
	9/29/30	1,000 "	20,125.00
			48,577.50
Realized	12/16/31	2,000 "	14,770.00
		Loss	33,807.50
Motor Products Corporation			
Cost	12/20/29	500 shs.	25,587.50
Realized	12/16-19/31	500 "	11,592.50
		Loss	14,295.00
NET LOSS REPORTED ITEM 8			315,667.31

SCHEDULE D

CAPITAL LOSS

DECEMBER - 31 - 1931

Chrysler Corporation			
Cost	7/20/28	4,464 rights @ \$2.75	12,276.00
Subscription to 744 shs.		\$57.50 per sh.	42,780.00
Cost of 744 shs.			55,056.00
Cost 7/14/25 1,500 shs. Maxwell "B" Stock 209,975.			
Exchanged Dec. 1925 for 7600 shs. Chrysler			
Received 7/20/28 7600 rights to subscribe to new stock.			
(1) Market Value 7/20/28-7600 shs. Chrysler		562,400.	
(2) " " " 7600 rights		20,900.	
		583,300.	
Cost assigned to 7600 rights			
20,900 @ 209,975			7,523.53
583,300			5.50
Purchased 2 rights @ \$2.75			
Subscription to 1,267 shs. @ \$57.50		72,852.50	
Total Cost of 1,267 shs.		80,381.53	
Cost of 156 shs. sold (\$63.45 per sh.)			16,243.20
Total Cost 1,000 shs.			71,299.20
Realized 12/22/31 1,000 shs.			13,185.00
		Capital Loss	57,714.10

Chrysler Corporation

(3) Cost	7/14/25	3,400 shs.	80,617.00
Realized	7/20-21/31	3,400 "	79,539.00

Capital Loss

11,078.00

TOTAL CAPITAL LOSS

68,802.10

- (1) \$74.00 per share
(2) \$2.75 " right
(3) Cost adjusted after selling up to 10 rights

SCHEDULE C

LOSS ON SALE OF SECURITIES

DECEMBER - 31 - 1931

		Forward	274,343.27
<u>Third National Investors Corporation</u>			
Cost	12/20/30	200 shs.	5,817.50
Realized	12/16-19/31	200 "	2,565.96
		Loss	3,251.54
<u>International Nickel Co. of Canada, Ltd.</u>			
Cost	12/20/29	1,000 shs.	28,452.50
	9/29/30	1,000 "	20,125.00
Realized	12/16/31	2,000 "	48,577.50
		Loss	14,770.00
			33,807.50
<u>Motor Products Corporation</u>			
Cost	12/20/29	500 shs.	25,587.50
Realized	12/16-19/31	500 "	11,292.50
		Loss	14,295.00
			325,667.21
<u>NET LOSS REPORTED ITEM 8</u>			

SCHEDULE D

CAPITAL LOSS

DECEMBER - 31 - 1931

<u>Chrysler Corporation</u>			
Cost	7/20/28	4,444 rights @ \$2.75	12,276.00
Subscription to 744 shs.		\$57.50 per sh.	42,780.00
Cost of 744 shs.			55,056.00
Cost 7/14/28 1,900 shs. Maxwell "B" Stock 209,975.			
Exchanged Dec. 1928 for 7600 shs. Chrysler			
Received 7/20/28 7600 rights to subscribe			
to new stock.			
(1)	Market Value 7/20/28	7600 shs. Chrysler	562,400.
(2)	"	" 7600 rights	20,900.
			583,300.
Cost assigned to 7600 rights			
			7,523.53
Purchased 2 rights @ \$2.75			
			5.50
Subscription to 1,267 shs. @ \$57.50			
			72,852.50
Total Cost of 1,267 shs.			
			80,381.53
Cost of 226 shs. sold (\$63.45 per sh.)			
			14,443.20
Total Cost 1,000 shs.			
			71,299.20
Realized	12/22/31	1,000 shs.	13,585.00

Capital Loss

(57,714.10)

Chrysler Corporation

(1) Cost	7/14/28	3,400 shs.	60,617.00
Realized	7/20-21/31	3,400 "	79,539.00

Capital Loss

11,068.00

TOTAL CAPITAL LOSS

68,782.10

- (1) \$74.00 per share
 (2) \$2.75 " right
 (3) Cost adjusted after assigning value to rights received 7/10/28.

JOHN THOMAS SMITH

ANALYSIS OF COST OF HOLDINGS OF PAR-MOUNT PUBLIX CORPORATION
STOCK WITH RESPECT TO STOCK DIVIDENDS RECEIVED.

Purchase Date	Number Shares	Cost	No. shares Received as Stock Div.	Adjustment of Cost as to	
				Original Purchase	as to Stock Div.
Lot #1 Nov. 8, 1930	1,000.	\$44,160.00	{ 25		
9/30/31 Stock Dividend			{ 25.625	42,000.00	2,160.00
12/31/31					
Lot #2 May 28, 1931	1,000.	22,625.00	{ 25		
9/30/31 Stock Dividend			{ 25.625	21,500.00	1,125.00
12/31/31					
Lot #3 July 23-24, 1931	1,000.	22,875.00	{ 25		
9/30/31 Stock Dividend			{ 25.625	21,500.00	1,075.00
12/31/31					
Lot #4 Sept. 22, 1931	500.	7,312.50	{ 12.5	7,150.00	162.50
12/31/31 Stock Dividend			{ 12.5	6,150.00	162.50
Lot #5 Sept. 29, 1931	500.	8,312.50	{ 12.5		
12/31/31 Stock Dividend					
	4,000.	103,875.00	176.875	98,500.00	4,675.00

JOHN T. SMITH

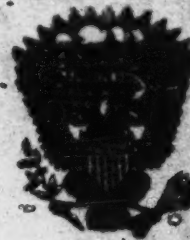
CONTRIBUTIONS 1931

Catholic Charities of the Archdiocese of New York	2,090.00
The Commonwealth Guaranty Fund	750.00
Emergency Unemployment Relief Committee	750.00
The Cardinal Gibbons Institute, Inc.	500.00
Women's Fund Committee, Emergency Unemployment Relief Committee	100.00
The Ladies of Charity of the Catholic Charities of the Archdiocese of New York	100.00
Yale University	150.00
Catholic Boys Club of the Archdiocese of New York	95.00
Catholic Actors Guild	25.00
Convent of the Good Shepherds, Hickatunk, N.J.	123.10
Diocesan Catholic Orphanage, Jackson, Cal.	50.00
Catholic Boys Brigade	10.00
The Catholic Institute for the Blind	10.00
Big Brother & Big Sister Federation	10.00
Catholic Big Brothers, Inc.	25.00
Creighton University Alumni Loyalty Fund	10.00
St. Vincent de Paul Society	100.00
Guild of the Infant Savior	25.00

TOTAL4,833.10

Defendant's Exhibit C.

United States



of America

TREASURY DEPARTMENT
WASHINGTON

Ex. C
U. S. Dist. Court
S. D. of N. Y.
MAR 24 1938

January 8, 1938

PURSUANT to the provisions of Section 861, Chapter 17, Title 28 of the
United States Code (Section 882 of the Revised Statutes of the United States),
I hereby certify that the annexed is a true copy of Individual Income Tax Return
for 1937, filed by John T. Smith (John Thomas Smith), New York, New York,

on file in this Department.



IN WITNESS WHEREOF, I have hereunto set my hand,
and caused the seal of the Treasury Department to be
affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

T. A. Birgefeld
Chief Clerk, Treasury Department.

Form 50-1

U. S. GOVERNMENT PRINTING OFFICE: 1937-O-186047

1. Income from Partnerships. (See instructions.)

2. Income from Estates. (See instructions.)

3. Gifts and Royalties. (See instructions.)

4. Profits from Sale of Real Estate, Stocks, Bonds, etc. (See instructions.)

5. Taxable Interest on Liberty Bonds, etc. (See instructions.)

6. Other Income (including dividends on stock of foreign corporations). (See instructions.)

(a) 2/64 Interest in Tug Boat Venture

(b)

7. Total Income for 1936

8. Interest Paid

9. Taxes Paid. (See instructions.)

10. Losses by Fire, Storm, etc. (See instructions.)

11. Bad Debts. (See instructions.)

12. Contributions. (See instructions.)

13. Other Deductions Authorized by Law. (See instructions.)

14. Total Deductions on Items 8 to 13

15. Net Income (Item 7 minus Item 14)

RAISED INCOME CREDIT

16. Federal Income Tax over \$10,000	6000000
17. Less Federal Income Tax and Credits for Dependents	450000
18. Balance (Item 16 minus Item 17)	5570000
19. Amount withheld at 2% (Item 18 over \$4,000)	400000
20. Amount withheld at 2% (Item 18 over \$4,000)	400000
21. Amount withheld at 2% (Item 18 over \$4,000)	1770000
22. Federal Tax 60% of Item 18	3342000
23. Federal Tax 60% of Item 18	3342000
24. Federal Tax 60% of Item 18	708000
25. State or Local Tax	88000
26. Tax on Federal and State Tax of Item 25 to 26	168000
27. Credit of 50% of the tax over 50% of Item 25, 26, 27, and 28	42000

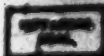
COMPUTATION OF TAX (See instructions.)

28. Net Income (Item 15 above)	56637899
29. Less Dividends (Item 6)	45269990
30. Interest on Liberty Bonds, etc. (Item 5)	
31. Credits for Dependents	20000
32. Federal Exemption	350000
33. Total of Items 29 to 32	45696980
34. Balance (Item 28 minus Item 33)	11132939
35. Amount withheld at 2% (Item 34 over \$4,000)	400000
36. Balance (Item 34 minus Item 35)	10732939
37. Amount withheld at 2% (Item 36 over \$4,000)	400000
38. Amount withheld at 2% (Item 36 over \$4,000)	10337939
39. Federal Tax 60% of Item 28	33982739
40. Federal Tax 60% of Item 28	33982739
41. Federal Tax 60% of Item 28	708000
42. State or Local Tax	88000
43. Tax on Federal and State Tax of Item 42 to 43	168000
44. Credit of 50% of the tax over 50% of Item 42, 43, 44, and 45	42000
45. Total Tax (Item 39 plus Item 44)	33562739
46. Less Income Tax Paid at Source	
47. Income Tax paid to a foreign country or U.S. possession	
48. Balance of Tax (Item 45 minus Item 46 and 47)	33562739

AFFIDAVIT

I swear (or affirm) that the return, including the accompanying schedules and statements, has been prepared by me, and to the best of my knowledge and belief, is a true and complete return which is good faith for the taxable year stated, pursuant to the Revenue Act of 1936 and the Regulations issued thereunder.

Return to and accompanied by the 12 1/2% of net income



An attached return must be marked "Amended" if it is a return.

John J. Smith
Signature of taxpayer

Signature of preparer

Double check will be accepted only if payable at year

A-1

SCHEDULE A - INCOME FROM ALL SOURCES (See Instruction 1)

1. Name of taxpayer	2. Social Security number	3. Name of income	4. Amount	5. Date received
		Interest on U.S. Government bonds	2,000.00	
		Dividends from stocks	10,000.00	
		Capital gains from stocks	10,000.00	
		Other income		
		Total	22,000.00	

Explain any deduction claimed on lines 1, 14, 15, 17, and 18.

SCHEDULE B - OTHER TAXABLE INCOME AND DEDUCTIONS (See Instruction 7)

1. Name of taxpayer	2. Social Security number	3. Name of income	4. Amount	5. Date received
		Interest on U.S. Government bonds	2,000.00	
		Dividends from stocks	10,000.00	
		Capital gains from stocks	10,000.00	
		Other income		
		Total	22,000.00	

Explain any deduction claimed on lines 1, 14, 15, 17, and 18.

SCHEDULE C - PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 8)

1. Name of taxpayer	2. Social Security number	3. Name of property	4. Date acquired	5. Date sold	6. Amount received	7. Cost or other basis	8. Profit or loss
		General Motors Corp.	1980	1980	100,000.00	80,000.00	20,000.00
		Chrysler Corporation	1980	1980	100,000.00	80,000.00	20,000.00
		General Motors Corp.	1980	1980	100,000.00	80,000.00	20,000.00

State how property was acquired.

SCHEDULE D - CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 9)

1. Name of taxpayer	2. Social Security number	3. Name of property	4. Date acquired	5. Date sold	6. Amount received	7. Cost or other basis	8. Profit or loss
		Chrysler Corporation	10/1/51	1980	350,000.00	430,000.00	220,000.00
		Chrysler Corporation	7/14/51	1980	20,000.00	10,000.00	70,000.00

State how property was acquired.

SCHEDULE E - INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 10)

1. Name of taxpayer	2. Social Security number	3. Name of obligation	4. Date acquired	5. Date sold	6. Amount received	7. Cost or other basis	8. Profit or loss
		Liberty Bonds					
		U.S. Government Bonds					
		Other obligations					

Explain any deduction claimed on lines 1, 14, 15, 17, and 18.

SCHEDULE F - EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 14, 15, 17, AND 18

1. 14. TAXES PAID

2. 17. CONTRIBUTIONS

General Motors Corp.	1929	103011000	6518270	13841625
Chrysler Corporation	1929	103011000	6518270	13841625
Chrysler Corporation	1929	103011000	6518270	13841625
Chrysler Corporation	1929	103011000	6518270	13841625

State how property was acquired

SCHEDULE D - CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 2)

1. Name of Property	2. Date Acquired	3. Date Sold	4. Amount Received	5. Cost or Other Basis	6. Gain or Loss	7. Description of Property
York & Company	0/1/29	10/29	35000000	450,00000	22000000	
Chrysler Corporation	1/14/29	10/29	84575	16,84300	720545	

State how property was acquired

SCHEDULE E - INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 10)

1. Description of Securities	2. Interest Received in 1929	3. Amount Owed	4. Principal Amount of Securities	5. Amount Owed in 1929	6. Amount Owed in 1929
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia.					
(b) Securities issued under Federal Farm Loan Act or as amended, and Certificates of Indebtedness issued after June 17, 1929.					
(c) Liberty 2 1/2% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of U. S. government.					
(d) Liberty 4 1/2% and 4 3/4% Bonds, Certificates of Indebtedness issued before June 15, 1929, Treasury Bonds and Savings Certificates.					
(e) Treasury Notes.					

SCHEDULE F - EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 14, 16, 17, AND 18

14. TAXES PAID		17. CONTRIBUTIONS	
State Income Tax (1929)	14,194.07	Catholic Charities of the Archdiocese of New York	1,000.
City	1,481.75	Commonwealth Security Fund	1,500.
Real Estate	5,201.00	Yale University	125.
Auto License Fees	90.00	Society of St. Vincent de Paul	225.
Club Dues & Admissions	444.18	Catholic Boys Brigade of U.S.	10.
	19,860.64	Catholic Big Brothers	10.
		Big Brother & Big Sister Federation	10.
			2,860.

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULE A AND B

1. Name of Property	2. Date Acquired	3. Date Sold	4. Original Cost	5. Depreciation Allowed	6. Depreciation Claimed	7. Depreciation Claimed

EXPLANATION OF DEDUCTION FOR LOSS, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 18

1. Name of Property	2. Date Acquired	3. Date Sold	4. Original Cost	5. Depreciation Allowed	6. Depreciation Claimed	7. Depreciation Claimed

A-2

704 In the United States District Court, Southern District
of New York

[Title omitted.]

Stipulation settling bill of exceptions

It is hereby stipulated and agreed that the foregoing contains all the testimony and exceptions made at the trial of this case, and that the same may be settled and ordered on file as the bill of exceptions herein.

Dated New York, October 25th, 1938.

DAVID SHER,
Attorney for the Appellant-Appellee.
LAMAR HARDY,
United States Attorney,
Attorney for the Appellee-Appellant.

Order settling bill of exceptions

Upon the foregoing stipulation, it is ordered that the foregoing may be settled and ordered on file as the bill of exceptions herein.

Dated New York, October 25, 1938.

MORTIMER W. BYERS,
U. S. D. J.

705

In United States District Court

[Title omitted.]

Plaintiff's petition for appeal and order allowing appeal

Now comes the above-named plaintiff, John Thomas Smith, appellant, considering himself aggrieved by the judgment of this Court made and entered on the 10th day of May 1938, in the above-entitled action, in which plaintiff prayed in the complaint for judgment in the sum of \$57,569.44 with interest, adjudging that the plaintiff have judgment against the defendant upon the verdict of the jury in the sum of \$28,935.49, together with interest according to law, and that plaintiff recover from the defendant his costs in the sum of \$34.50, and does hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from such judgment and such part thereof as denies plaintiff recovery of the sum of \$24,822.75 prayed for in the complaint with respect to loss plaintiff claimed to have sustained from the sale of certain sundry stockholdings to Innisfail Corporation, with interest according to law, for the reasons specified in the Assignment of Errors to be filed herein, and prays that this appeal
706 may be allowed and that the transcript of record, proceedings and papers of record upon which said judgment was made,

duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Second Circuit.

Dated New York, N. Y., July 14, 1938.

DAVID SHER,

Attorney for Plaintiff,

Office & P. O. Address, 1775 Broadway,
Borough of Manhattan, City of New York.

The foregoing appeal is hereby allowed upon the filing of security for costs according to law.

Dated New York, N. Y., July 15th, 1938.

VINCENT L. REIBELL,

U. S. D. J.,

707

In United States District Court

[Title omitted.]

Plaintiff's assignment of errors

The plaintiff, by his attorney, David Sher, assigns as errors upon which he will rely upon the prosecution of his appeal from the judgment entered herein on the 10th day of May 1938, as follows:

(1) The Court erred in denying plaintiff's motion for direction of a verdict for the full amount sought in his complaint, as appears in the following portions of the record, viz.:

"Mr. SHER. * * * Now, if your Honor please, I move that your Honor direct a verdict for John Thomas Smith for the full amount sought in his complaint.

The COURT. That motion is denied.

Mr. SHER. I respectfully except to your Honor's denial of my motion for a directed verdict, and affirmatively move that the case be submitted to the jury on the facts.

Mr. PRATT. If your Honor please, the Government proposes
708 to make a motion in the alternative on the issues in the case brought by John Thomas Smith—that is, that the Government moves for a directed verdict as to the case brought by John Thomas Smith, and in the event of your Honor's denial of that motion we seek leave affirmatively to have the issues go to the jury for their deliberation.

The COURT. Now, if I understand it, you both move for a directed verdict but in the event of denial you reserve the right to go to the jury. That is the effect of the motion that has been made?

Mr. SHER. Yes.

Mr. PRATT. Yes.

The COURT. Both motions are denied with exception."

(2) The Court erred in denying plaintiff's motion to set aside so much of the verdict as failed to grant him \$24,822.75, as appears in the following portions of the record, viz.:

"Mr. SHER. If your Honor please, the plaintiff John Thomas Smith moves to set aside so much of the verdict as fails to grant him \$24,822.75, the loss alleged to have been sustained on the sales of securities to Innisfail Corporation, as against the law, against the evidence, for all the reasons set forth in Section 549 of the Civil Practice Act.

The COURT. Motion denied. Exception."

(3) The Court erred in its charge and instructions to the jury as follows:

"I think I have told you substantially all about the corporation except this: I asked Mr. Smith what the business of the corporation was and he said, well, it was to hold securities that he purchased and turned over to it. That is all its business was. * * *

"Mr. SHER. May I respectfully except to your Honor's statement that Mr. Smith testified that the only business of Innisfail Corporation was to hold stock which he purchased?

The COURT. Yes; your exception is noted, and in that connection, let me say this, members of the jury, if I have misstated the testimony you pay no attention to what I have said, because it is your memory and your understanding of the testimony that counts, not what the Court says about it."

(4) The Court erred in instructing the jury as follows:

"Mr. SHER. If your Honor please, the plaintiff offers, in evidence transcript of the account with Innisfail Corporation on the books of John Thomas Smith, the paper from which Mr. Smith was testifying in cross examination by Mr. Pratt:

The COURT. You asked me whether in a given concrete transaction a book would be admissible in evidence and I told you it would. Whether that is close or remote from what we are talking about is another thing. I want to be sure that I fully understand your objection. That is all.

Mr. PRATT. My objection was that it should not be accepted as evidence of anything tending to prove the contract or any legal step in the chain of evidence, or any legal link in the chain of evidence that might tend to prove such contract or contracts,

The COURT. I am instructing the jury that the entries upon that transcript are not to be regarded by them as conclusive upon the question of sales of stock for tax loss purposes, but I am admitting it in evidence because I think it is a competent part of the plaintiff's proof. Therefore, the objection is overruled.

Mr. PRATT. Exception, please.

(Marked "Plaintiff's Exhibit No. 23.")

Mr. SHER. In other words, if I might presume to expand, if your Honor please, although this record is not conclusive, yet it is some evidence of the transactions.

Mr. PRATT. I object to any expansion by Mr. Sher, if your Honor please.

The COURT. I think the jury understand. It is not evidence of the transactions; it is evidence that the plaintiff kept a record and this is the record. The fact that he kept a record is not proof in and of itself that he did certain things. He might have kept a record in which he discovered the North Pole; but that would not prove that he did it.

Mr. SHER. If your Honor please, I most respectfully except to that part of it. I think that books of account are certainly some evidence of the transactions which they describe.

The COURT. This is not strictly a book of account. I guess you understand that.

Mr. SHER. It is a transcript from the ledger, your Honor, and as long as there is no objection to its authenticity, then it is the ledger which we are offering, and that certainly is evidence of a transaction.

The COURT. You just except to any instructions to the jury that you do not approve of and that will preserve your client's rights, and we will pass on.

Mr. SHER. That is the only reason I made that suggestion, your Honor.

The COURT. Very good."

711 (5) The Court erred in denying plaintiff's third request to charge as follows:

"3. For income tax purposes involving the year 1932, the validity of a sale is not affected by the fact that the purchaser is a corporation, all of the stock of which is owned by the seller."

"I am going to change in your second request the word 'affected' to the word 'controlled.' Do you object to that?"

The request is this as amended by the Court:

II. For income tax purposes involving the year 1932, the validity of a sale is not controlled by the fact that the purchaser is the husband or wife of the seller.

Mr. SHER. I respectfully except to your Honor's declining to charge that it is not affected by.

The COURT. Your exception is noted. And I am going to do the same with respect to the third request.

III. For income tax purposes involving the year 1932, the validity of a sale is not controlled by the fact that the purchaser is a corporation, all of the stock of which is owned by the seller.

I tried to explain that to you when I referred to the earlier case.

Mr. SHER. May I respectfully take the same exception to that?

The COURT. Yes, surely."

(6) The Court erred in refusing to charge plaintiff's fourth request, as appears from the following portion of the record:

"4. If the plaintiff, John Thomas Smith transferred title to the securities in question to Mrs. Smith and to Innisfail Corporation

712. for a consideration, you must find for the plaintiff, John Thomas Smith.

If the plaintiff, Mary A. Smith, transferred title to the securities in question to Mr. Smith for a consideration, you must find for the plaintiff, Mary A. Smith."

"The fourth request is denied as to the first paragraph.

Mr. SHER. May I respectfully have an exception?

The COURT. Surely. I will charge the second paragraph, which has to do with Mrs. Smith.

If the plaintiff, Mary A. Smith, transferred title to the securities in question to Mr. Smith for a consideration, you must find for the plaintiff, Mary A. Smith.

I so charge."

(7) The Court erred in refusing to charge plaintiff's fifteenth request, as appears from the following portion of the record:

"The jury is entitled to consider that the Government treated the Innisfail Corporation as separate and distinct from Mr. Smith during the years 1926 to 1937, inclusive, and collected thousands of dollars from it in respect to its gains and profits."

"The COURT. All right, a request has been proffered, which I think you are probably entitled to have, but not quite in the form in which it is offered. I will say to you in considering this case as a whole, it is proper for you to bear in mind that the evidence demonstrates that during certain of these years from 1926 to 1932 and perhaps all of them, the Innisfail Corporation paid franchise taxes and income taxes. Otherwise, it is declined.

Mr. SHER. May I respectfully have an exception, your Honor?

The COURT. Surely."

713 — (8) The Court erred in granting defendant's request to charge No. 5 and in instructing the jury pursuant thereto, as appears from the following portion of the record:

"5. The tax laws deal with realities and the statute permitting the deduction of losses allegedly sustained as the result of sales require that such losses be actual and real and sustained in a transaction having a regular business purpose."

"Mr. SHER. May I respectfully except to the granting of instruction No. 5, * * * ?

The COURT. Your exception is noted."

(9) The Court erred in granting defendant's request to charge No. 8 and in instructing the jury pursuant thereto, as appears from the following portion of the record:

"8. The property after being sold must be out of the control and domination of the seller and outside of his power and disposition."

"Mr. SHER. May I respectfully except to the granting of instructions No. * * *, 8, * * * ?

The COURT. Your exception is noted."

(10) The Court erred in granting defendant's request to charge No. 20 and in instructing the jury pursuant thereto, as appears from the following portion of the record:

"20. If you believe that John Thomas Smith had not proved the cost to him of the stock he claims to have sold to the Innisfail Corporation and of the stock he claims to have sold to Mary A. Smith, then you may find for the Government on that issue, that is, that the additional tax assessed by the Commissioner of Internal Revenue by reason of disallowing the claimed losses on said alleged sales was properly made and properly collected from John Thomas Smith."

Mr. SHER. May I respectfully except to the granting of instructions No. * * * 20 * * * ?

The Court. Your exception is noted."

(11) The Court erred in granting defendant's request to charge No. 21 and in instructing the jury pursuant thereto, as appears from the following portion of the record:

"21. If you believe that Mary A. Smith had not proved the cost to her of the stock she claims to have sold to John Thomas Smith, then you may find for the Government on that issue, that is, that the additional tax assessed by the Commissioner of Internal Revenue by reason of disallowing the claimed losses on said alleged sale was properly made and properly collected from Mary A. Smith."

Mr. SHER. May I respectfully except to the granting of instructions No. * * * 21?

The Court. Your exception is noted."

(12) The Court erred in refusing to admit evidence as follows:

"Q. Mr. Smith, I hand you five documents each entitled 'Memorandum of Sale,' and each dated December 29, 1932, and ask whether you recognize the signature on each of these documents?—A. I do.

Q. And whose signatures appear on these documents?—A. Well, my signature appears on the document and the signature of Mr. Hogan, secretary of the Innisfail Corporation appears on each of the documents.

Q. Do you remember what you did with these documents after you signed them?—A. I think I handed them over to Mr. Doty and told him to put them in the files for purposes of keeping a record.

Q. Was Mr. Doty an officer of the Innisfail Corporation?—A. Yes, he was an officer, I think, of the Innisfail Corporation and he also preserved my records.

Mr. SHER. Plaintiff offers in evidence memorandum of sale dated December 29, 1932.

Mr. PRATT. My objection is the same, if your Honor please.

Mr. SHER. I offer in evidence a list of memoranda of sale.

Mr. PRATT. My objection is the same, if your Honor please. They are self-serving. The issue in the case—

The COURT. Your 'they are self-serving' part does not interest me very much. The question is the custody of these papers. If you are satisfied on that, well and good. If you are not—

Mr. PRATT. I am not satisfied on the custody. The status of the corporation is, while not collaterally in issue is indirectly in issue, and if these things were supposed to have come from Mr. Doty, who is secretary of the corporation, I think we ought to have them introduced through Mr. Doty, in order to see what sort of a routine these documents would go through, where they were filed, in whose office, when they were received and so on.

Mr. SHER. If your Honor pleases, Mr. Smith testified that he gave the bills of sale to Mr. Doty, an officer of the Innisfail Corporation, as soon as he signed them. I should think that that is sufficient. Regardless of what the Innisfail Corporation may be, according to the memorandum of sale, they were not in a vacuum, they were with a man who was an officer of that corporation.

Mr. PRATT. We do not know what Mr. Doty did with them, whether he filed them, or—

716 Mr. SHER. I think it is enough that Mr. Smith delivered them.

The COURT. Please, please. You got off on the wrong foot when you said the status of the corporation is in question. That has nothing to do with the admissibility of these documents at all. If that is the basis of your objection you ought to abandon it, because it has no bearing on the admissibility of these documents, as I said, at all. There is the mere question of custody. Now, if I understand the Government's position from its brief the sooner we get down to the real facts the better.

You have a technical objection on the custody of these documents and if you wish to urge it and if you wish to stand on it I will sustain the objection, but if you are satisfied as to the authenticity of the documents, then make your objection and I will rule on it. What is your attitude?

Mr. PRATT. I urge the objection on the technical grounds.

The COURT. Very good. Mark them for identification. (Marked "Plaintiffs' Exhibit No. 11" for identification.)

Mr. SHER. Exception, if your Honor pleases.

The COURT. You understand that all that is in my mind is the whereabouts of these papers from 1930 to the present time. That is all that has to be accounted for, and when that is accounted for the offer may be renewed."

(13) The Court erred in admitting evidence as follows:

"Mr. PRATT. I offer in evidence the certified copy of the income tax return filed by John Thomas Smith for the year 1931.

Mr. SHER. I object to that as irrelevant and immaterial.

717 We are concerned with the tax year 1932. There is no showing of materiality of the income tax return for 1931.

The COURT. I will take it subject to a motion to strike if not connected with the issues in this case.

(Defendant's Exhibit A for identification received in evidence.)

Mr. PRATT. This is the income tax return for Mr. Smith for the year 1931, and it shows that there was a net income of \$58,071.35, on which no tax was paid, because the capital losses more than offset the amount due.

Q. You recall, do you not, Mr. Smith, in the year 1931, in December of that year, transferring securities to Mrs. Smith?

Mr. SHER. I object to that as immaterial and irrelevant, improper cross-examination.

The COURT. Objection overruled.

Mr. SHER. Exception.

The WITNESS. Yes; I do.

Q. And do you recall that at that time you transferred 2,000 shares of Industrial Rayon on which you claimed a loss of \$38,589?

Mr. SHER. Pardon me, your Honor—

A. I can't tell that.

Mr. SHER. (continuing). To prevent my objecting all the time, may I have an objection to this whole line of questions referring to the year 1931, and an exception noted on the record?

The COURT. Well, if you are satisfied with that you may, but I think perhaps it would be wiser for you to object to each question.

718 Mr. SHER. All right. I just wanted to save the time. I object to that as irrelevant and immaterial.

The COURT. Objection overruled.

Mr. SHER. And improper cross-examination.

The COURT. Objection overruled.

Mr. SHER. Exception.

Q. Do you recall that transaction, Mr. Smith?—A. I recall it in 1932.

Q. 1931.—A. We have a pending—1931. We have had a pending controversy with the Government that involved substantially the same sort of question as here, the Government having taken the position that I could not sell to my wife and I could not sell to this particular corporation, the Innisfail Corporation. That has been the subject of a trial before the Tax Board of Appeals and is—pending over in this time, so that the details of that, I can my have my recollection refreshed to give you exactly what the amounts are and so forth.

Mr. PRATT. If your Honor please, I move to strike out that answer.

The COURT. Yes; that is not responsive. Now, you are a lawyer and you are supposed to know what responsive answers are. The question is did you include a loss of about \$38,000 on 2,000 shares of Industrial Rayon? If you don't remember, say so.

The WITNESS. I can't remember.

Q. Did you transfer a thousand shares of Underwood-Elliott-Fisher to Mrs. Smith in December of 1931, and as a result thereof claim a deduction of your tax return for a loss of \$29,015?

Mr. SHER. Same objection.

The COURT. Same ruling.

Mr. SHER. Exception.

719 A. I can't remember. I mean by that that I can't remember the precise dates, amounts, and so forth.

Q. But you do remember that was in December 1931, do you not?—A. I remember it was in the month of December 1931, when we had transactions of purchase and sale.

Q. And do you recall a sale of 4,000 shares of Paramount or transfer of 4,000 shares of Paramount?—A. I recall—

Mr. SHER. Same objection.

The COURT. Same ruling.

Mr. SHER. Exception.

A. I recall a sale to Mrs. Smith of some Paramount stock. How many shares or at what price I can't recall now.

Q. And you were—A. The records will show. I have the records.

Q. You would not remember that you claimed a loss of \$52,000 in connection with the—

Mr. SHER. Same objection.

Q. (Continuing). In connection with that?

Mr. SHER. Same objection, your Honor.

The COURT. Same ruling.

Mr. SHER. Exception.

A. I can't remember anything about the amounts. I can tell I did claim I sustained a loss as a result of the Paramount transaction with my wife.

Q. Now, do you recall having claimed a loss of \$63,310.45, as a result of the transfer to Mrs. Smith in December 1931, of 4,000 shares of Caterpillar Tractor?

720 Mr. SHER. Same objection.

The COURT. Same ruling.

Mr. SHER. Exception.

A. No.

Q. You recall, however, that you did have a transaction of considerable size with Mrs. Smith in December of 1931, do you not?—

A. Yes.

Mr. SHER. Same objection.

The COURT. Same ruling.

Mr. SHER. Exception.

Q. And do you recall the approximate amount of the value of the securities transferred by you to Mrs. Smith at that time?—A. Oh, yes.

Mr. SHER. Same objection.

The COURT. Same ruling.

Mr. SHER. Exception.

A. It was a very large amount. It ran into, as I recollect it, several hundred thousand dollars.

Q. When you transferred these securities to Mrs. Smith in December of 1931, you received no cash in return, did you, Mr. Smith?—

A. Well, I got the equivalent. In other words, for many years Mrs. Smith and I had financial transactions and in 1931, just as in 1932, we took a balance to find out where we stood, and that balance was liquidated just as this one was liquidated by a transfer of securities at market value to Mrs. Smith.

Q. That is, at the day of the sale or immediately before, or shortly thereafter, you would not receive from Mrs. Smith any cash, would you?—A. Well, I had not received cash because I was the debtor in the transaction and I was paying a debt by the delivery of the stock that I was getting rid of my debt for.

721 Q. Do you received no cash as a result of that transfer at that time in December, 1931 did you?—A. At the time of the sale the balance was against me.

Q. And it was your contention before the Board of Tax Appeals, was it not—

The COURT. Just a minute, just a minute. Never mind what he argued at any time. You are interested in facts.

Mr. PRATT. All right. I will withdraw that question, if your Honor please.

Q. The consideration for the transfer of the securities in December of 1931 was described by you as the cancellation of certain alleged indebtedness existing between you and Mrs. Smith in favor of Mrs. Smith to the extent of approximately \$165,000?

Mr. SHER. I object to that.

The WITNESS. I certainly most never said 'alleged indebtedness.'

Mr. SHER. I object to that as improper cross examination.

The COURT. If your client is going to answer I can't rule on an objection. You will have to arrange with him not to answer when you wish to object. What do you want to do? Do you want to press your objection or do you want to stand on his answer?

Mr. SHER. I would like to urge my objection, your Honor.

The COURT. Yes. I will sustain the objection. The witness has testified to facts in his last answer and they merely recapitulate what he has already testified to excepting the word 'alleged.'

722 Q. The running account that you have testified to which existed between yourself and Mrs. Smith had a credit balance in favor of Mrs. Smith in December of 1931, is that correct?

Mr. SHER. I object to that as irrelevant and immaterial, improper cross examination, already having been asked and answered.

The COURT. I will allow it.

Mr. SHER. Exception.

The WITNESS. Yes.

Q. And that was in the amount of approximately—

The COURT. Ask him what the amount was.

Q. Was it the amount of \$165,000?—A. I don't recall the amount.

Q. But you know, as a result of the sale, that the amount was extinguished at that time, do you not?—A. Well, the extent of the value of the property transferred, yes, but I am not presently in a position to say what that amount was, or whether there was something left over, but what happened was to the extent of the value of the securities sold and delivered to Mrs. Smith, my indebtedness to her was reduced by that amount.

Q. Well, do you recall the details under which that indebtedness about which you have just testified arose?

Mr. SHER. I object to that as irrelevant and immaterial, improper cross examination, outside of the issues of this case.

The COURT. I do not want you to think that I am arbitrary about this. I will tell you why I am giving this series of rulings. It seems to me that the question of intention plays a very large part in the determination of this case. You are familiar with the general rule that other transactions of a given nature may be admitted for consideration of the jury where it will enable them to ascertain the present or absence of an intention. That is the theory on which I am overruling your objection.

Mr. SHER. My objection at this time especially was directed at the details of these old transactions, and I am perfectly willing to allow the Government to show that Mr. Smith had previously sold stock to Mrs. Smith. We are rather anxious to get that into the record, but all these questions into the detail of the old financial arrangements and the exact amount and the prices, character of securities sold, certainly only go to encumber the record."

(14) The Court erred in admitting evidence as follows:

"Q. Was there any authorization by the board of directors recorded in the minutes in which authority for such indebtedness was permitted to exist?

Mr. SHER. I object to that as not the best evidence. The minutes are in evidence in the record, and they are available. I don't see that we will get any place by asking the witness oral questions of the period 10 years ago as to whether the minutes provided for something when the minutes are certainly the best evidence.

The COURT. Let us analyze your objection. If I can subtract 26 from 32, instead of being 10, it is 6.

Mr. SHER. He is going back to 1926.

The COURT. The case before the Court involves the year 1932. So, that is only six years ago. I think it is quite competent in trying to develop the practice for the District Attorney to ask whether when the corporation was about to lend money to this witness any corporate action on that occasion was taken. If that is the question, I will allow it and overrule the objection.

Mr. PRATT. That is the question.

Mr. SHER. I think the question calls for an answer as to whether there was anything in the minutes approving of it.

The COURT. The witness can say whether he knows of anything in the minutes. Probably, he is familiar with the minutes.

The WITNESS. No, Judge, I am not familiar with the minutes.

Mr. SHER. Exception.

The COURT. All right. Then, ask your question on the basis that I suggested as to what the corporate practice was.

Q. Was it the corporate practice, Mr. Smith, for you to obtain permission—

The COURT. No, please. I gave you a simple question. When the corporation was about to lend money to you, was there any corporate action taken authorizing the loan?

The WITNESS. I don't believe so. I do not believe there was any formal meeting to discuss the thing. The situation of the corporate affairs or the corporation's affairs was known by all the officers and directors, and it was approved by them as satisfactory, but this was not a corporation that was formally run as some railroad corporation, or something like that. It was an informal corporation.

The COURT. In other words, the answer is no.

The WITNESS. I think so, yes.

The COURT. So do I.

Q. As a matter of fact, you could sell securities of Innisfail at any time or in any manner which you yourself thought best, isn't that so?

725 Mr. SHER. I object to the form of that question, as to whether he could.

The COURT. Yes.

Mr. SHER. What he did is what we are interested in.

The COURT. I think the objection is sound and it will be sustained.

Q. Do you know whether or not the board of directors, Mr. Smith, ever conferred upon you the power to sell securities of Innisfail Corporation at any time and in any manner you chose?

Mr. SHER. Same objection, your Honor.

Mr. PRATT. He can state whether he knows.

The COURT. Objection overruled.

Mr. SHER. Exception.

A. I do not think there was any specific having or voting of any such power. I think it was part of the power of the president authorized by the by-laws and by the practice of the business.

(15) The Court erred in admitting evidence as follows:

Q. In the case of these sales to Mrs. Smith in 1931, you sold that stock in order to establish tax losses, is that correct?

Mr. SHER. I want to renew my objection again to that line of questioning that was started yesterday.

The COURT. Same ruling.

Mr. SHER. Exception.

Q. Isn't that correct?—A. Now, there is one other thought that entered into the consideration of that that I had in mind.

Q. All right. In connection with your sale of the 1,900 shares of Aldebarn and the 1,900 shares of Hudson Motors, you sold that stock to establish tax losses?—A. Partly that and also to pay off my obligations to the corporation.

Q. Wouldn't you sit down and calculate the tax you would ordinarily have to pay and then select from your securities a list of those on which you had a loss, and then you would effect the transfer of those particular securities in order to reduce your income tax?—A. No.

Mr. SHER. I want to urge again my objection to injecting the 1931 tax here in this case.

The COURT. I am in entire sympathy with your views. I will grant that we are not trying the 1931 tax case, but certain incidents seem to be common to the tax question, and if that be so, and it is so, reasonable inquiry with regard to the first is permissible for the purpose of establishing the question of intent. However, the witness has answered that question before you spoke and said, 'No,' so I understand there is no objection to it.

Mr. SHER. Did he make that answer?

The WITNESS. No, and if I did I certainly did not intend to.

The COURT. Perhaps my hearing is not so good. I thought he answered 'No.'

Q. Do you want to correct that answer, Mr. Smith?—A. I would like to hear the question again if I may.

(Question read.)

Mr. SHER. I object to that, your Honor.

The COURT. The objection is overruled.

Q. Is your answer yes or no, Mr. Smith?—A. I do not want to make a yes or no answer to that because I can't state the proper—tell the thing adequately yes or no.

Q. Well, there were securities on which you had paper losses at the time?—A. Paper losses? No.

Q. Until you sold them you had a paper loss?—A. No, you do not have any loss at all.

Q. Don't you call that in the vernacular a paper loss?—A. No, I do not call it a paper loss.

Q. They were securities on which if sold by you at that time would have produced cash in an amount less than you had originally paid for such securities, isn't that true?—A. That is true.

Q. Didn't you select that type of securities and effect a transfer to Innisfail Corporation in 1932?—A. Well, you mean, as between certain stocks and other stocks I picked these rather than the others, of course. I picked these particular stocks.

Q. And it was because you had a loss on them?—A. That was one of the reasons. It was not the only—

Q. Didn't you?—A. (Continuing)—Reason.

The COURT. Let the witness finish his answer, please.

The WITNESS. The reason is this—

Mr. PRATT. Your Honor, I object.

The COURT. You asked for the operation of the witness's mind and you are going to get it.

Mr. PRATT. All right.

The WITNESS. I never bought a share of stock without considering the tax incident. There are a lot of stocks I can't afford to buy because of that, and I never sold a share of stock without considering how it is going to affect my taxation position, because there are a lot of securities that I can't afford to sell because of the tax incident, and therefore, never once do I fail to take into consideration how it is going to affect my question of tax, whether it is a gain or a loss,

728 or whether I could sell or afford to sell this security and I can't afford to sell that security. That goes to every particular sale.

(16) The Court erred in admitting evidence as follows:

Q. Now, going back to the year 1926, tell us how much profit was realized by Innisfail Corporation as the result of the exchange of the 5,003 shares of Chrysler Preferred for 26,477 shares of Common in the year 1926?

Mr. SHER. I object to that as incompetent, irrelevant and immaterial, calling for a conclusion of the witness, outside the scope of proper cross examination, too remote, prejudicial.

The COURT. I do not believe it can be outside the scope of cross, in view of the very careful examination on direct examination of this witness with respect to the 1926 dealings of the corporation. I think you opened the door to cross examination.

Mr. SHER. Well, it is improper cross examination to ask him as to a profit made by the corporation.

The COURT. Perhaps the question is objectionable in form inasmuch as it assumes there was a profit. You might ask the witness if that transaction resulted in a gain or a loss.

Q. With that amendment to the question, did that transaction result in a gain or loss?—A. Yes, it did, a gain.

Mr. SHER. Same objection.

The COURT. Same ruling.

Mr. SHER. Exception.

Q. Now, how much was that profit?

Mr. SHER. Same objection.

729 The COURT. Same ruling.

Mr. SHER. Exception.

A. I think it was about \$515,000.

The COURT. Gain?

The WITNESS. Gain, yes, realized through an exchange of stock.

Q. And you also received as income in that year \$39,715.50, all dividends on the Chrysler stock, did you not? You can refer to your transcript on that.

Mr. SHER. Same objection, if your Honor please.

The COURT. Same ruling.

The WITNESS. \$39,715.50 for the year 1926.

Q. Making a total income with respect to that Chrysler stock of \$556,125.63, isn't that correct?

Mr. SHER. Oh, I object to that, your Honor. It is a misleading question, "total profit on Chrysler stock," and he includes dividends and the transactions involving the Stock Exchange.

Mr. PRATT. I say income.

The COURT. Well, it is not income, is it? It might be a question of gain in part and income in part. Perhaps you better show that the total of those two figures without characterizing is a certain amount of money.

Q. The total of those two figures, Mr. Doty, is in the sum of \$556,125.63?—A. Approximately that; yes.

Q. Then the corporation paid a tax in that year of how much?

Mr. SHER. I object to that, your Honor, as irrelevant and immaterial, what tax Innisfail Corporation paid, six years prior to the year in issue.

The COURT. Well, I still say I think you opened the door to cross examination on the corporate transactions in 1926 because you went into them very carefully in direct.

Mr. SHER. Well, if your Honor please, it was necessary to show that Mr. Smith owed Innisfail Corporation \$68,000 in 1932 when he sold them the securities and in part cancellation of the debts. We had to show that to prove the consideration for that sale in 1932, which was the transaction in issue. Therefore, it was collateral to the matter at issue, but I do not see how that opens the door to the defendant to go into the income tax return of Innisfail Corporation back to 1926.

The COURT. I think the corporation transactions for 1926 are properly before the jury at the present time. It may not enter into the final deliberations of the jury at all and I am not criticising you for having done it, but I merely say that having opened that subject, I think cross-examination is appropriate. That is all.

Mr. SHER. Well, it simply occurs to me, your Honor, that it will be interminable if we are going into every independent transaction of the corporation that is not directly involved in the issue here. What difference does it make to the determination of the question whether Mr. Smith sold stock to Innisfail Corporation in 1932 to show how much Innisfail Corporation paid as income tax in 1926, and how they computed their return in 1926. I am arguing at length now in order to take care of the subsequent transactions which apparently counsel will try to introduce.

The COURT. Well, I am frank to say that I am not sure that it has any bearing on it, but equally I am not sure that it has no bearing. Therefore, I will overrule the objection.

Mr. SHER. Exception.

The WITNESS. \$69,679.17.

731 Q. And at that time it had no bank account, did it?

Mr. SHER. At what time?

Mr. PRATT. In 1926.

The COURT. At the end of 1926. I think the testimony is that the bank account was opened in 1927.

Q. In 1927?—A. It had a bank account when it paid the taxes.

Q. Yes. That was in 1927.—A. Yes.

Q. Now, the taxes were paid in that year with moneys furnished by John Thomas Smith, isn't that correct, looking at those advances there of March?—A. Whatever the source of money was came from Mr. Smith.

Q. Now, you were familiar surtax rates and the normal tax rates in that year, were you not?—A. I was at that time.

Mr. SHER. I object to that, your Honor, the surtax rates and the normal tax rates speak for themselves as a matter of law.

The COURT. The question is whether he was familiar with them. I think he is the only person who knows whether he was.

Mr. SHER. Exception.

The WITNESS. At that time I was familiar with them; yes.

Q. And you know, do you not, that as a result of reporting the gain on the Chrysler exchange and the fact that the dividends on the Chrysler stock were not taxable, Innisfail Corporation with John Thomas Smith saved approximately \$67,000 in taxes for the year 1926?

732 Mr. SHER. I object to that, your Honor, as a wholly improper question, calling for the conclusion of the witness, asking him to state as a result of the transactions the difference between the law applying to individuals and the law applying to corporations.

The COURT. Yes; I think your question is objectionable in form. What you probably mean to ask the witness is to compare a tax which would have been payable by an individual under a given state of facts with a tax payable by a corporation under the same state of facts. That comparison can be made by a person familiar with the law. I do not think it is proper for you to ask the witness to draw the conclusion that because certain things have been done in a certain way, therefore a certain result follows.

Mr. PRATT. I withdraw the question.

Q. On that sum of \$556,125.63, how much would an individual have been compelled to pay in income tax in the year 1926?

Mr. SHER. I object to that as hypothetical, calling for a conclusion of the witness, having no bearing on the issues of this case—

Mr. PRATT. If your Honor please—

Mr. SHER. The relation might be entirely different in the case of an individual.

Mr. PRATT. If your Honor please—

Mr. SHER. He may not have sold the stock to the corporation, in the first place.

Mr. PRATT. If your Honor please, it may well be, and undoubtedly it is a matter for argument, but if we are going to ask this Court and jury to refer to all the exhibits in this case and do the several problems of arithmetic, necessarily it is imposing a burden that is unnecessary. Here is a tax specialist who prepared the return of John Thomas Smith and Innisfail and the rest of them, and he can give the answer very, very quickly with respect to these transactions.

The COURT. Objection overruled.

Mr. SHER. May I just add, your Honor, Mr. Smith might have sold the stock to someone else. It just does not follow that you can compare the tax paid by Innisfail Corporation with another situation that simply did not exist.

Mr. PRATT. It does in this case.

The COURT. I suggest that you ask the witness to assume the following state of facts: (a) an individual receives a gain through an exchange of securities totaling \$516,000, and he receives in dividends \$39,000 plus, and that those two items constitute his entire income, do you know what the total tax is that he would have to pay?

Mr. SHER. If you Honor please, I hate to persist in my objection, but I must object to that as calling for a conclusion.

The COURT. Yes, it does call for a conclusion, and I am not sure that it is not the kind of a conclusion that this jury is entitled to have drawn. Do you know what tax an individual would pay substantially under those circumstances?

Mr. SHER. May I have an exception?

The COURT. Surely.

The WITNESS. I could not say what the tax would be.

The COURT. In round figures.

The WITNESS. It probably would be around—well, over \$100,000, I would say. I don't remember what the rates were in 1929. I would have to compute it. I know that the individual tax on that sum would be much greater than for a corporation.

734 The COURT. Well, are you able to state roughly or substantially how much greater?

Mr. SHER. Same objection, of your Honor please.

The COURT. Surely.

Mr. SHER. As an exception.

The WITNESS. Well, I would say that the tax probably would be around \$100,000 or more. It might be \$200,000.

Q. You, of course, in making that calculation would have to have in mind the normal surtax rates that existed in that year, wouldn't you?—A. Yes, sir.

Q. Now, using that to refresh your recollection, will you compute the actual amount?

Mr. SHER. Same objection, your Honor, and I think we are beginning to see now how improper this type of examination is. The witness is interpreting the law. He may be a tax expert, and I might say that the testimony does not show that, but he certainly can't testify as an expert on tax laws, and in this court no one could give such testimony. I do not see the possible propriety of this kind of testimony. I think it is prejudicial, calling for a conclusion, irrelevant, immaterial, outside of the scope of proper cross-examination. I must continue to make those objections, your Honor.

The COURT. I think you are entirely justified in making your objections. I think that your duty to your client requires it. However, I am going to overrule it.

Mr. SHER. Exception.

The WITNESS. Well, according to my computation it would be around \$101,000, based on an income of \$550,000.

735 Q. Well, it would be 5% normal tax and 20% surtax?—A.

I am taking the surtax of 20% on \$500,000, and that would be \$91,000, and the surtax of 20% on \$50,000 would be \$10,001.

Q. Why, don't you know that in that year the dividends were taxable by individuals?

The COURT. 1932?

Mr. PRATT. 1926.

Mr. SHER. I object to that as calling for a conclusion, your Honor, and I think it again shows the impropriety of this question.

Mr. PRATT. In 1926.

The COURT. In 1926 only for the purpose of surtax.

Q. Well, did you—A. I took \$550,000, and approximately that would be \$101,000. The normal tax—what was the normal tax in that year 1926?

Q. Five per cent.—A. Pardon?

Q. Five per cent?

Mr. SHER. Same objection.

A. Well, that would be \$25,000—well, \$126,000, approximately.

Q. Yes. Now, Mr. Doty—

Mr. SHER. Could I have a ruling?

The COURT. Yes; I am overruling the objection.

Mr. SHER. Exception.

The COURT. Do not ask the witness to draw any conclusion, please.

Mr. PRATT. Yes.

Q. So that the tax for the corporation was \$69,000?

Mr. SHER. Same objection.

The COURT. That already appears.

736 Q. And the total sum of your computation just made was in the sum of \$127,000?—A. About that.

Mr. SHER. The same objection.

The COURT. Same ruling.

Mr. SHER. Exception.

Q. Now, going to the year 1927. The corporation, Innisfail Corporation, in that year, received dividends of approximately \$79,000, isn't that so?

Mr. SHER. Same objection, if your Honor please.

The COURT. Doesn't that already appear? Doesn't that already appear from the testimony?

Mr. PRATT. Yes; on the direct examination.

Mr. SHER. I object to that as repetitious.

The COURT. I do not think that is a good objection. This is cross-examination on income from dividends, and that was how much?

The WITNESS. \$79,431.

Q. And the Innisfail Corporation paid no tax on that income, did it?

Mr. SHER. I object to that.

Mr. PRATT. And the year 1927?

Mr. SHER. I object to that for the same reasons.

The COURT. I will allow the question. Objection overruled.

Mr. SHER. Exception.

A. 1927?

Q. Yes.—A. No; there was no income tax paid for the year 1927.

Q. Now, if that income had been received by an individual, how much tax would have been payable by that individual for the year 1927?

Mr. SHER. Same objection, your Honor, and also because it
737 calls for a conclusion about facts not in evidence, about a purely hypothetical situation which may never have existed in this case.

The COURT. I wonder if in making that objection you are recalling the testimony that Mr. Smith gave upon the witness stand, in questioning by you, as a result of which he compared the income tax payable by a corporation, and the income tax payable by an individual, and which he said, in effect, that he had that situation clearly in mind in conducting the affairs of Innisfail Corporation, in organizing it, and maintaining it.

Mr. SHER. Yes, your Honor, that was one of his purposes, because he stated that was the law, but I don't see how it follows that counsel can ask the witness how much Mr. Smith would have paid if he had not done something which he did, if he had not sold the stock.

The COURT. That is not the pending question at all. The pending question is this: how much would the surtax have been to an individual on dividends amounting to \$79,000?

Mr. SHER. And there is no evidence that the individual received such dividends, so it is a purely hypothetical question.

The COURT. It is a hypothetical question, and I think it calls for information to supplement the testimony that is already in the case. I am overruling the objection.

Mr. SHER. Exception.

The WITNESS. The surtax on \$80,000 would have been \$7,860.

Q. The surtax would have been \$7,000?—A. According to your tables here.

Q. What is the rate applicable?

Mr. SHER. Same objection to asking the witness what the rate applicable was.

738 The COURT. Overruled.

Mr. SHER. Exception.

A. I am taking your figure from the table, 18 per cent on \$80,000.

Mr. SHER. Just a minute, Mr. Doty.

The COURT. He is asking what factors the witness took into consideration in making his answer. That is what he is asking.

Mr. SHER. He is asking what the rate is.

The COURT. That is one of the factors that he put to him in the form of the question. You would not object to that, would you? Now, he is doing the same thing. In other words, he is saying, how do you reach that conclusion, and he has a right to ask the witness that.

Mr. SHER. May I have an exception.

The COURT. Surely.

Q. Now, assuming that the individual had had an income of \$100,000 for the year 1927, how much would the surtax be?

Mr. SHER. Same objection, your Honor.

The COURT. Are you getting into different ground now? Aren't you getting beyond the scope of your cross-examination?

Mr. PRATT. Probably it is argumentative, your Honor. I will withdraw the question.

Q. Now, for the year 1928, Mr. Doty, there were dividends in that year received by Innisfail totalling \$83,990, isn't that correct?—A. Approximately, yes.

Q. And there were profits on a sale of Gimbel's stock?—A. Yes.

Q. And Gillette?—A. Yes.

739 Q. So between the dividend and the profit on the sale of those two stocks there was a gain of net income of \$100,778, isn't that so?—A. Well—

Q. Approximately \$100,000?—A. \$100,000, right.

Q. Now, the corporation paid no tax on this \$100,000 in dividends, did it?

Mr. SHER. Same objection.

The COURT. Same ruling.

Mr. SHER. Exception.

A. They paid no tax on the dividends, no.

Q. Now, will you calculate the surtax that an individual would have had to pay on that income of \$100,778?

Mr. SHER. Same objection, your Honor.

The COURT. Same ruling.

Mr. SHER. Exception.

A. On \$100,000 it would be a surtax of \$11,660.

Q. Excuse me. How much was that?—A. \$11,660.

Q. Now, will you go to the year 1929. Do you have dividends in that year?—A. Yes.

Q. And how much?—A. Well, it would be around \$94,100.

Q. And the surtax on that is how much?

Mr. SHER. Same objection, if your Honor please.

The COURT. What year is this?

Mr. PRATT. 1929.

The COURT. What would the individual surtax have been on \$94,000, is that the question?

Mr. PRATT. Yes, sir.

Mr. SHER. Same objection, your Honor.

The COURT. I will allow it.

Mr. SHER. Exception.

A. A little over \$10,000.

Q. \$10,000 in surtax?—A. A little over that.

440 Q. Now, I show you Government's Exhibit C for Identification, the income tax return of John Thomas Smith for 1929, and ask you whether or not your signature appears thereon [handing]!—A. Yes, sir.

Q. That is, you notarized that?—A. Yes.

Q. Did you prepare the return for that year?—A. Probably.

Q. Don't you know?—A. I am sure I did; yes, sir.

Mr. PRATT. I offer in evidence Government's Exhibit C for Identification.

Mr. SHER. Objected to as incompetent, irrelevant and immaterial, outside the issues of the case.

The COURT. May I see it a moment, please. [Same handed to the Court.]

Mr. SHER. Remote and prejudicial.

The COURT. Perhaps I can't readily determine, but does this return reflect a sale of securities to the Innisfail Corporation by the individual?

Mr. PRATT. Yes, your Honor.

The COURT. That is a matter that I had in mind yesterday when I said that perhaps by asking those questions you had rendered this exhibit available to the Government.

Mr. SHER. Well, your Honor, I think I said at the time that it was necessary to prove how the indebtedness was created between Mr. Smith and Innisfail but that did not open the door to the inclusion of the personal income tax liability of Mr. Smith, which, in the first place, involves a whole lot of other transactions in 1929, and, in the second place, even as far as those transactions are concerned, the income tax liability on his sales to Innisfail are not in issue in this case. We are not trying the 1929 income tax return and it certainly is remote and prejudicial.

741 The COURT. Why is it prejudicial?

Mr. SHER. Because it is bringing in the income-tax issues of another year, and we are trying 1932 in this case.

The COURT. Well, I think I shall admit the document in evidence, but I will instruct the jury that if you look at this exhibit you are to do it only in connection with Mr. Smith's testimony that during the year 1929 he individually sold some securities to the Innisfail Corporation, and this return is not admitted because it may tend to throw light upon the question at issue here, which has to do with the tax paid by him in the year 1932. I hope that is clearly understood. With that in consideration the objection is overruled and Defendant's Exhibit C for Identification is received in evidence.

Mr. SHER. May I have an exception?

The COURT. Surely.

[Defendant's Exhibit C for Identification received in evidence.]

Mr. SHER. Your Honor, may I add one word? If the purpose of this is solely to establish the sale by Mr. Smith of securities in 1929 to Innisfail Corporation, that is the same thing which we ourselves have proved and I don't see that it is necessary for the Government to reinforce our proof.

Mr. PRATT. But it is necessary for the Government to examine into all the details of the direct case.

Mr. SHER. Well, if it is merely to bear out that transaction, it is agreed here that Mr. Smith sold securities to Innisfail in 1929. We proved that ourselves.

The COURT. And as I see it, the Government has the right
742 to show anything that it may be able to show from this return concerning that transaction. Now please except to the ruling, and when you have stated your exception your rights are preserved.

Mr. SHER. I think I have an exception in the record.

Q. Now, referring, Mr. Doty, to Defendant's Exhibit C in evidence, to that schedule which shows that a thousand shares of Aldebaran Corporation were sold by Mr. Smith. Do you see that?

A. Yes; it does.

Q. And on that there is a loss of how much claimed?

Mr. SHER. Same objection to that, your Honor.

The COURT. Doesn't it speak for itself? Doesn't the return speak for itself?

Mr. PRATT. It does. Just to illustrate that particular bond.

A. I couldn't—

Mr. SHER. Just a moment, Mr. Doty.

The COURT. Let me see it please.

[Document handed to the Court.]

The COURT. Well, it is pretty difficult to see what this shows, I think. I can't tell whether that is reported as a gain or a loss, because the figure indicates a loss of \$39,240, it looks like.

Mr. PRATT. The photostatic copy does not take the red figures, your Honor.

The COURT. That is the inference, that there is a loss of \$39,240. I will allow the witness to state what the exhibit indicates.

Mr. SHER. Exception, please.

The WITNESS. It indicates a loss approximately of \$39,000.

The COURT. As to that item.

743 Q. It does not state on the return that the security was sold to Innisfail Corporation, does it?

Mr. SHER. I object to that. The return speaks for itself.

The COURT. I will allow it.

Mr. SHER. Exception. Also, I object to it on the ground it is irrelevant and immaterial.

The COURT. All right. Your exception is noted.

The WITNESS. No, the return does not require to state to whom—

Mr. PRATT. Will you please answer my question?

Mr. SHER. Let him answer.

Q. It was a sale of that stock, was it not?—A. Yes.

Q. Now, do you see a sale of 1,900 shares of Hudson Motors?

Mr. SHER. Same objection, your Honor.

The COURT. Overruled.

Mr. SHER. Exception.

The WITNESS. 1,900 shares of Hudson Motor Car Company, did you say?

Q. On which a loss—A. It does not say the number of shares. It does not say the number of shares.

Q. Well, do you have any doubt at all in the world as to the number of shares?

Mr. SHER. I object to that, your Honor.

The COURT. Do not ask him that. Can you tell from the return? That is the question. Can you tell?

The WITNESS. Not from the return.

Q. Have you any independent recollection of that?—A. I think he sold 2,000 shares in 1929.

744 Mr. SHER. I object to that, your Honor.

The COURT. Did Mr. Smith's testimony cover that?

Mr. PRATT. His own testimony covered that.

Mr. SHER. Let him refer to the record, your Honor. I think that is the best way.

Q. Well, you testified on direct examination yesterday, Mr. Doty, that in 1923 Innisfail Corporation purchased from John Thomas Smith 19 shares of Hudson Motors?—A. 1,900.

Mr. SHER. I object to that as not being in the record. 1,900 is all right.

Mr. PRATT. Didn't I say 1,900?

Mr. SHER. 19, I think you said.

The WITNESS. I believe I did.

Mr. SHER. Just a moment.

Q. Well, have you any doubt—

The COURT. No.

Q. (Continuing) That the 1,900 shares—

The COURT. Just a moment. Start over again.

Mr. PRATT. I will withdraw the question.

Q. Isn't that the same 1,900 shares that is indicated in that return with reference to the Hudson Motor stock?

Mr. SHER. I have to object to that, just for the purpose of the record, because here he is going into the income tax situation.

The COURT. Objection overruled.

Mr. SHER. Exception.

Q. Is that the 1,900 shares that is referred to in this return?—A. I don't think so. I think that this refers to the 2,000 shares
745 which were sold during the year 1929, and the 1,900 included in that 2,000.

Q. So that the loss indicated there on the sale of 1,900 shares of Hudson or rather on the sale of the Hudson Motors stock is a loss on 2,000 shares, is that right?—A. That is right.

Q. Now, what would the loss be on 1,900 shares?

Mr. SHER. I object to that, your Honor, for the same reason.

The COURT. I will allow it.

Mr. SHER. Exception.

A. I couldn't say. I would have to compute it.

Q. Well, will you refer to your books, please, and see how much it shows?—A. About \$49,000 loss on the sale of 1,900 shares.

Q. On those two items there was a reported loss of approximately \$88,000, is that correct?

Mr. SHER. I object to that on the ground that the return speaks for itself and for the other reasons I previously urged.

Mr. PRATT. If your Honor please, can there be—

The COURT. Objection overruled.

Mr. SHER. Exception.

A. About \$88,000.

Q. And if an individual having experienced such loss of \$88,000, he would be entitled to a deduction of how much in tax for the year 1929?

Mr. SHER. Same objection, your Honor.

The COURT. Well, you are asking a pretty interested question. I think for the sake of clarity I will sustain the objection. The fact is that a loss appears on the return and it comprehends those
746 two items, and that a loss of that size constitutes a deduction from the gross income tax, and the result is a reduction in the payment of the tax. Now, that is the fact?

Mr. PRATT. That is the fact.

The COURT. But just what the reduction will be in dollars and cents, of course, on a rising scale as to rating the facts, and I think that is too intricate a computation to put up to the witness for present purposes.

Mr. PRATT. All right, your Honor.

Q. Referring to the year 1930, Mr. Doty, what were the dividends, according to your records, received by Innisfail Corporation for that year?—A. About \$92,000.

Q. And what would the surtax that an individual would have been required to pay amount to for that year?

Mr. SHER. Same objection.

The COURT. The same ruling.

Mr. SHER. Exception.

A. \$10,140 would have been the surtax on \$92,000.

Q. Now, referring to Plaintiffs' Exhibit 1 in evidence, the tax return for the year 1932—

The COURT. I do not think that you ought to leave the Innisfail Corporation situation for 1930 in thin air. The fact that an individual surtax on \$92,000 would have been a certain sum is only incomplete information.

Mr. PRATT. I will adopt your Honor's suggestion and ask him a further question.

Q. Were those dividends taxable to Innisfail Corporation for that year?

The COURT. The question is not framed properly. You mean would Innisfail—

747 Mr. PRATT. Pay any tax.

The COURT. Did they pay any tax on those dividends?

Q. Did they pay any tax on those dividends, Mr. Doty?—A. I don't think—

Mr. SHER. I object to that, your Honor.

The COURT. I will allow that question.

Mr. SHER. Exception.

A. I don't think corporations paid a tax on dividends for that year.

Q. I did not ask you about corporations. I asked you about Innisfail Corporation. Did it?—A. Innisfail is a corporation. No.

Q. It did not pay a tax?—A. Not on those dividends, no.

Q. Will you refer to Plaintiff's Exhibit No. 1 in evidence, the income tax return of John Thomas Smith for the year 1932. Isn't that correct?—A. Yes.

Q. Now, in that return there are indicated various sales of securities on which losses were claimed, isn't that correct?

Mr. SHER. I object to that on the ground that the return speaks for itself.

The COURT. Objection overruled.

Mr. SHER. Exception, please.

The WITNESS. Yes, sir.

Q. Now, from your testimony of yesterday, you will recall that John Thomas Smith sold to Innisfail Corporation National Baking

stock, Gaynor Electric, Investrad, Firestone, Electric Autolite, and National Sugar.—A. Yes.

Q. Now, have you something there which will show the aggregate of losses claimed by John Thomas Smith as a result of those sales?

748 Mr. SHER. I object to that.

A. You mean—

Mr. SHER. Just a moment. I object to that on the ground that the return speaks for itself and that the question is improper in form.

Mr. PRATT. All right.

Q. Mr. Doty, take your time and add those items up, please.

Mr. SHER. Wait a minute, now.

The COURT. I think you are right in saying that the return speaks for itself, but it requires some skill and interpretation to tell what the return does show. This gentleman is shown to have that skill, and I will allow him to interpret the return in that respect for the benefit of the jury.

Mr. PRATT. That is the purpose of it, your Honor.

Mr. SHER. May I have an exception?

The COURT. Surely.

Q. The question is, what are the total losses due to the sale of securities shown in that return?—A. You mean the sale of securities to Innisfail Corporation.

Q. Yes, to Innisfail. Isn't it shown in this schedule?—A. Yes; approximately \$175,000.

Q. You prepared that tax return for Mr. Smith, did you not?—A. Yes; I did.

Q. And that sale to Innisfail Corporation resulted in the elimination of approximately how much of a tax?

Mr. SHER. Oh, I object to that.

Q. (Continuing). By Mr. Smith.

749 The COURT. I will sustain the objection. Please tell us what you say the total losses are from sales of any securities to Innisfail.)

The WITNESS. About \$175,000.

Q. How much did you deduct as a capital loss?

Mr. SHER. I object to that on the ground that the return clearly shows that better than the witness can state it.

The COURT. I will allow it.

Mr. SHER. Exception, please.

Q. How much did you deduct as capital loss?—A. Well, it would be one-eighth of that, 12½ per cent, \$21,850."

(17) The Court erred in excluding evidence as follows:

"Q. Did you make an examination of the income of Mr. Smith from the sale of securities during that period?—A. I did.

The COURT. During what period, please?

Mr. SHER. The period of the examination, your Honor, November 1st, 1931, to May 31st, 1934.

The COURT. Now I have told you once, and I don't want to have to do it again. Presently we are concerned with the year 1932 and this witness may go back to November 1931.

Mr. SHER. Well, your Honor. I just want to say—

The COURT. Please except to the ruling. We are going to discuss income for 1932.

Mr. SHER. Very well."

(18) The Court erred in excluding evidence as follows:

750 "Q. Well, do you have a record of the investments of Innisfail Corporation as of December 31, 1932, and if not, for what time do you have such a record?—A. No, sir, I do not. I have a record of the investments of Innisfail Corporation at October 31, 1931, and at May 31, 1934.

Mr. SHER. May we have the investments of May 31, 1934?

The COURT. No.

Mr. SHER. Your Honor, that will show that Innisfail Corporation having purchased these securities from Mr. Smith, as we allege still holds them in his investment account in 1934.

The COURT. The only difficulty with that is that theoretically the books which might be entirely accurate at the same time there might have been a series of transactions between the end of 1932 and 1934 that would not show it in the same manner.

Mr. SHER. Well, if we find the exact part, your Honor—

The COURT. Let us find out what Innisfail had on December 31, 1932, which comprehends the date when it is supposed to have been the purchaser of certain of Mr. Smith's securities.

Mr. SHER. Well, I asked the witness that question, and he said he can't give it.

The COURT. Very good. If he can't give it, he can't.

Mr. SHER. Well, that is why I asked him—

The COURT. It does not follow from that that he can give something two years later.

Mr. SHER. But if we find the exact same securities and the exact same number of shares in May 1934, I submit that that is evidence of the purchase by Innisfail Corporation of the securities.

751 The COURT. After all is said and done, haven't these corporate agents shown you what their records show with respect to the issuance of securities to Innisfail Corporation?

Mr. SHER. Yes, your Honor, I am convinced of that, but I want to put in every bit of proof to establish that.

The COURT. I think you have covered that. That is sufficient. This witness says he was not able to ascertain from Innisfail records its purchases on that date. We are not without proof on the subject.

Mr. SHER. Well, may I have an exception?

The COURT. Surely.

Mr. SHER. That is all."

Wherefore, the plaintiff prays that said errors be corrected and that the judgment of the District Court be reversed and that such dis-

position be made thereof as in accordance with the laws and statutes of the United States in such case made and provided.

Dated, New York, July 14, 1938.

DAVID SHER,
Attorney for Plaintiff,
Office and P. O. Address, 1775 Broadway,
Borough of Manhattan, City of New York.

752

In United States District Court

[Title omitted.]

Plaintiff's Notice of Appeal

SIR: Please take notice that the plaintiff, John Thomas Smith, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the judgment entered in the above entitled action in the office of the Clerk of the District Court of the United States for the Southern District of New York on the 10th day of May, 1938, wherein it was adjudged that plaintiff recover the sum of \$28,935.49, together with interest according to law, found by the jury, and costs, as taxed, in the sum of \$34.50, and said plaintiff appeals from said judgment and such part thereof as denies plaintiff recovery of the sum of \$24,822.75 prayed for in the complaint with respect to loss plaintiff claimed to have sustained from the sale of certain sundry stockholdings to Innisfail Corporation, with interest according to law.

Dated, New York, N. Y., July 20, 1938.

Yours, etc.,

DAVID SHER,
Attorney for Plaintiff,
Office and P. O. Address, 1775 Broadway,
Borough of Manhattan, City of New York.

753

To LAMAR HARDY, Esq.,

United States Attorney,

Southern District of New York,

Attorney for Defendant,

U. S. Court House, New York, N. Y.

758

In United States District Court

Citation to defendant

BY THE HONORABLE HENRY W. GODDARD, ONE OF THE UNITED STATES JUDGES FOR THE SOUTHERN DISTRICT OF NEW YORK, IN THE SECOND CIRCUIT, TO JOSEPH T. HIGGINS, COLLECTOR OF INTERNAL REVENUE FOR THE THIRD DISTRICT OF NEW YORK, Greeting:

You are hereby cited and admonished to be and appear before a United States Circuit Court of Appeals for the Second Circuit to be

holden at the Borough of Manhattan in the City of New York, in the District and Circuit above named on the 17th day of August 1938, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Southern District of New York, wherein John Thomas Smith is appellant and you are respondent to show cause, if any there be, why the judgment in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 18th day of July, in the year of Our Lord One Thousand Nine Hundred and Thirty-eight and of the Independence of the United States the One Hundred and Sixty-third.

HENRY W. GODDARD,

*United States District Judge for the Southern District
of New York in the Second Circuit.*

In United States District Court

[Title omitted.]

Order extending plaintiff's time to file bill of exceptions to October 8, 1938

Upon reading and filing the annexed consent, and upon motion of David Sher, attorney for the plaintiff, John Thomas Smith, it is

Ordered that the May 1938 Term of this Honorable Court be and the same hereby is extended to and including the 8th day of October 1938, for the purpose of filing Bill of Exceptions in the above-entitled action.

Dated, New York, N. Y., Aug. 8, 1938:

CHARLES WEISER, Clerk.

We hereby consent to the entry of the above order without further notice.

DAVID SHER,
Attorney for Plaintiffs.

LAMAR HARDY,
United States Attorney,
Attorney for Defendant.

In United States District Court

[Title omitted.]

*Order extending defendant's time to file bill of exceptions to
October 8, 1938*

Upon reading and filing the annexed consent, and upon motion of Lamar Hardy, United States Attorney for the Southern District of New York, it is

Ordered that the May 1938 Term of this Honorable Court be and the same hereby is extended to and including the 8th day of October 1938, for the purpose of filing Bill of Exceptions in the above entitled action.

Dated New York, N. Y., Aug. 6th, 1938.

CHARLES WEISER, *Clerk.*

762 We hereby consent to the entry of the above order without further notice.

DAVID SHER,
Attorney for Plaintiffs.

LAMAR HARDY,
*United States Attorney,
Attorney for Defendant.*

To DAVID SHER, Esq.,
1776 Broadway, New York City.
So ordered 8/8/38.

CHARLES WEISER,
Clerk, U. S. Dist. Ct.

763 In United States Circuit Court of Appeals for the
Second Circuit

[Title omitted.]

Stipulation as to exhibits

It is hereby stipulated and agreed that the Plaintiff's Exhibits 6, 8, 12, 13, 14, and 24, being stock certificates and stock powers which were marked in evidence on the trial of this action, be and the same are hereby omitted from the printed record and that one representative stock certificate be printed for each exhibit in lieu of printing the entire exhibit.

It is further stipulated and agreed that these exhibits may be handed up on the argument of this appeal with the same force and effect as though incorporated herein.

Dated New York, October 25th, 1938.

DAVID SHER,
Attorney for Appellant-Appellee.

LAMAR HARDY,
*United States Attorney,
Attorney for Appellee-Appellant.*

764 In United States Circuit Court of Appeals for the
Second Circuit

[Title omitted.]

Order extending time to file record on appeal to October 25, 1938

Upon reading and filing the annexed consents of the attorneys for the respective parties hereto, and upon motion of David Sher, attorney for the plaintiff, it is

Ordered that the time for John Thomas Smith, plaintiff-appellant, and Joseph T. Higgins, defendant-appellant, in the above entitled cross appeals to settle and file the record on appeal herein be and the same hereby is extended to and including the 25th day of October 1938.

Dated New York, N. Y., October 17, 1938.

MARTIN F. MANTON,
U. S. C. J.

We hereby consent to the entry of the above order without further notice.

DAVID SHER,
Attorney for John Thomas Smith.
LAMAR HARDY,
United States Attorney,
Attorney for Joseph T. Higgins.

765

In United States District Court

[Title omitted.]

Stipulation as to record

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed upon by the parties.

Dated New York, October 25th, 1938.

DAVID SHER,
Attorney for Appellant-Appellee.
LAMAR HARDY,
United States Attorney,
Attorney for Appellee-Appellant.

766

[Clerk's certificate to foregoing transcript omitted in printing.]

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT

No. 173. October Term 1938

JOHN THOMAS SMITH, PLAINTIFF-APPELLANT

v.

JOSEPH T. HIGGINS, COLLECTOR OF INTERNAL REVENUE OF THE UNITED
STATES FOR THE THIRD DISTRICT OF NEW YORK, DEFENDANT-
APPELLEE

Appeal from the District Court of the United States for the Southern
District of New York

Argued January 23, 1939. Decided March 6, 1939

Appeal by each party from a judgment on a verdict in a suit to
recover income taxes paid together with interest and a penalty
assessment. Reversed.

CHASE, Circuit Judge: The plaintiff filed his income tax return for
1932 with the Collector of Internal Revenue for the Third District
of New York and therein claimed a deduction for a loss sustained
on the sale of securities to Innisfail Corporation on December 29,
1932. He also claimed a deduction for a loss sustained on the sale
of certain securities to his wife on the same date. Both deductions
were disallowed; a deficiency in income taxes for 1932, based on the
disallowances, was determined; and a fraud penalty was assessed.
The plaintiff paid the amount of the deficiency, penalty, and interest
to the defendant collector. He then duly filed a claim for refund
and, upon the failure of the Commissioner to act upon the claim
within six months, brought this suit to recover the amount so paid.

The trial was by jury in the District Court for the Southern Dis-
trict of New York. Both sides moved for a directed verdict. Both
motions were denied. A verdict was returned for the defendant on
the cause of action based on that part of the deficiency resulting from
the disallowance of the claimed loss on the sale of securities to
Innisfail and on the other two causes of action the plaintiff re-
covered. Both parties have appealed but the appeal of the defend-
ant does not include the fraud penalty recovered and relates only
to the cost basis to be given the securities sold by the plaintiff to his
wife.

In 1926 Innisfail Corporation was organized by the plaintiff who
acquired all of its stock except qualifying shares of directors and

even as to those he had the power to acquire them at any time. Innisfail was clearly a one-man corporation wholly owned by the plaintiff all of the time from its incorporation through the entire taxable period here involved. It purchased, held, and sold securities as he caused it to and at the time he sold to it the shares with which we are presently concerned, it owned securities then having a value of \$791,751.92 of which all but about \$30,000 had been acquired from the plaintiff and it also had cash to the amount of \$17,115.03.

The sale in question was of securities which cost the plaintiff \$234,002.31 and for which he received from Innisfail the then market price of \$60,923.80 in the following manner: He was indebted to Innisfail to the amount of \$68,364.68 just before the sale and paid that debt with the securities and his check for the remainder. The shares were transferred to the purchaser on the books of the issuing corporations and have all been retained by Innisfail except those of one corporation which was liquidated in 1935. On December 22, 1934, the plaintiff sold all of his shares in Innisfail to his children. Thus it was proved that the securities here involved were actually sold to Innisfail and the legal title to them has ever since been in the purchaser except only those of the corporation which was liquidated. Not even those shares were reacquired by the plaintiff.

However closely the plaintiff controlled Innisfail as its sole stockholder, and he was also its president, it is clear that that corporation had for years before its transaction and did afterwards buy, sell and hold large amounts of securities. It had a business existence and was a corporate entity separate and distinct by itself with assets and liabilities of its own apart from those of its sole stockholder. And the fact that it had but one stockholder did not prevent its having such a separate legal status. *Burnet v. Commonwealth Improvement Co.* (287 U. S. 415, 53 S. Ct. 198, 77 L. Ed. 399). As such a corporation, it was in law a legal person whose acts were its own in making the purchase of these securities and when the purchase was made and the shares transferred to it Innisfail was the sole owner of them. The plaintiff had no legal interest thereafter in the property sold. Compare, *Klein v. Board of Supervisors* (282 U. S. 19, 51 S. Ct. 15, 75 L. Ed. 140, 73 A. L. R. 679); *Burnet v. Clark* (287 U. S. 410, 53 S. Ct. 207, 77 L. Ed. 397); *Nixon v. Lucas* (2 Cir., 42 Fed. (2d) 833). Where a corporation having but one stockholder does have separate dealings at a loss the sole stockholder may not take a deduction for its loss on his own income return. *Dalton v. Bowers* (287 U. S. 404, 53 S. Ct. 205, 77 L. Ed. 389); *Menihan v. Commissioner* (79 Fed. (2d) 304). Nor is his holding period to be added to that of such a corporation for the purpose of determining whether a capital asset was sold. *Webber v. Knox* (8 Cir., 97 Fed. (2d) 921).

Perhaps a case as closely in point as any is *Jones v. Helvering* (63 App. D. C. 204, 71 Fed. (2d) 214) where a loss deduction was allowed on a real sale by a sole stockholder to his corporation. See also *Commissioner v. Eldridge* (9 Cir., 79 Fed. (2d) 629, 102 A. L. R.

500), and *Commissioner v. McCreery* (9 Cir., 83 Fed. (2d) 817). We had a parallel situation in *Foster v. Commissioner* (2 Cir., 96 Fed. (2d) 130), in respect to the securities purchased by the closely controlled corporation and retained by it. As the evidence was undisputed and proved an actual sale of these securities which permanently divested the plaintiff of title to them, his motion for a directed verdict on this cause of action should have been granted. The existence of a motive to reduce or avoid taxation by making a valid sale is of no consequence for the plaintiff had the right to give effect to that purpose by whatever lawful means he had available. *Gregory v. Helvering* (293 U. S. 465; 55 S. Ct. 266, 79 L. Ed. 596, 97 A. L. R. 1355). Though the case just mentioned is relied on by the government it is not of help to it for it had to do with a pretended reorganization not within the scope of that statute. The present case differs in that it involves a real sale to an actual buyer.

The second cause of action is reviewed on the appeal of the collector only on the one point of the cost basis of the shares. The plaintiff purchased 2,000 shares of General Motors Corporation stock in October 1929. In August 1931 these shares were merged in a certificate for 10,000 shares which became a part of the plaintiff's holdings. In 1929 the plaintiff had received in a stock split-up 2,000 shares of General Motors stock which were represented by certificates D54441-60. Plaintiff's accountant in June 1932, erroneously allocated these certificates on the plaintiff's books to the October 1929 purchase. When in December 1932, the plaintiff sold his wife 2,000 shares of General Motors stock he intended to deliver to her the shares he had purchased in October 1929. He asked his accountant which certificates represented those shares and was told that the ones numbered as above did. At the time they were held as collateral by a bank and he had them released and delivered them to his wife to complete his sale of shares to her. Plaintiff argues that as he clearly intended to sell the shares he purchased in 1929, those he delivered should be treated as the shares he desired to sell and relies on *Helvering v. Rankin* (295 U. S. 123, 55 S. Ct. 732; 79 L. Ed. 1343); *Kraus v. Commissioner* (2 Cir., 88 Fed. (2d) 616); and *Fuller v. Commissioner* (1 Cir., 81 Fed. (2d) 176). It is to be noted, however, that here the issue is not whether the plaintiff sufficiently described the shares he intended to sell so that they could be identified. It is plain that his final description was by certificate numbers and that he delivered the actual certificates he intended to deliver though they did not represent the shares he thought they did. In this situation the controlling decision is *Davidson v. Commissioner* (305 U. S. 44, 59 S. Ct. 43, 83 L. Ed. —) (Dec. Nov. 7, 1938). See also *Curtis v. Commissioner* (8 Cir., 89 Fed. (2d) 736); *Vawter v. Commissioner* (10 Cir., 83 Fed. (2d) 11). As there was no issue of fact for the jury, the defendant's motion for a directed verdict should have been granted.

Judgment reversed and cause remanded for a new trial.

United States Circuit Court of Appeals, Second Circuit

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 29th day of March, one thousand nine hundred and thirty-nine.

Present: Hon. LEARNED HAND, Hon. AUGUSTUS N. HAND, Hon. HARRIE B. CHASE, Circuit Judges.

JOHN THOMAS SMITH, PLAINTIFF-APPELLANT

vs.

JOSEPH T. HIGGINS, COLLECTOR, ETC., DEFENDANT-APPELLEE

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed with costs and cause remanded for a new trial.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

WM. PARKIN, Clerk.

Order for mandate

United States Circuit Court of Appeals, Second Circuit. Filed Mar. 29, 1939. William Parkin, Clerk.

UNITED STATES OF AMERICA.

Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 771, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of John Thomas Smith, Plaintiff Appellant, against Joseph T. Higgins, Collector, etc., Defendant Appellee, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this twenty-second day of May, in the year of our Lord one thousand nine hundred and thirty-nine, and of the Independence of the said United States the one hundred and sixty-third.

[SEAL]

WM. PARKIN, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT

JOHN THOMAS SMITH, PLAINTIFF-APPELLANT

vs.

JOSEPH T. HIGGINS, COLLECTOR OF INTERNAL REVENUE OF THE UNITED
STATES FOR THE THIRD DISTRICT OF NEW YORK, DEFENDANT-
APPELLEE

Upon reading and filing the annexed affidavit of Robert E. Pratt, duly verified the 8th day of March 1939, and upon all the proceedings had herein,

Now, upon motion of Gregory F. Noonan, United States Attorney for the Southern District of New York, attorney for the defendant-appellee herein, it is

Ordered that John Thomas Smith, plaintiff-appellant herein, show cause before this Court at the United States Court House, Foley Square, in the Borough of Manhattan, City of New York, on the 13th day of March 1939, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the opinion of this Court heretofore filed herein on March 6, 1939, should not be amended so as to strike out therefrom the direction that judgment be entered in accordance with such opinion, and for such other further and different relief as to this Court may seem just and proper.

Sufficient reason appearing therefor, let service of a copy of this order on the attorney for the plaintiff-appellant on or before March 9, 1939, be deemed sufficient service thereof.

Dated New York, N. Y., March 8, 1939.

AUGUSTUS N. HAND,
United States Circuit Judge.

To DAVID SMITH, Esq.,
Attorney for Plaintiff-Appellant,
1775 Broadway, New York, N. Y.

United States Circuit Court of Appeals for the Second Circuit

JOHN THOMAS SMITH, PLAINTIFF-APPELLANT

v.

JOSEPH T. HIGGINS, COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES FOR THE THIRD DISTRICT OF NEW YORK, DEFENDANT-APPELLEE

Affidavit

STATE OF NEW YORK,

County of New York, Southern District of New York, ss:

Robert E. Pratt, being duly sworn, deposes and says:

I am an Assistant United States Attorney for the Southern District of New York in charge of the above-entitled matter, and am familiar with the proceedings heretofore had herein.

That on March 6, 1939, an opinion was filed in this Court, wherein it was directed that judgment be filed in accordance with the said opinion, with the result that the judgment of the lower court was reversed.

That the decision of this Court, as exemplified by the said opinion, was incorrect in that it failed to consider the effect of the jury's verdict upon the issue presented by the plaintiff's sale of securities to Innisfail Corporation, and further, that this Court was without power to direct that judgment be entered in accordance with its opinion.

That the said opinion indicates that in connection with the issue presented by the sale of securities by the plaintiff herein to Innisfail Corporation, this Court proceeded upon the assumption that since both parties had moved for a directed verdict, that the facts in connection with such issue were undisputed, or that the parties by such motion had desired that the lower court act as the trier of the facts, rather than the jury.

That the transcript of the record filed with this Court shows that in addition to the motions for a directed verdict, and coupled therewith, there were further motions made by both parties to submit the case to the jury for its deliberation, in accordance with the accepted practice permitted by the Civil Practice Act for the State of New York.

That the direction that judgment be filed in accordance with the opinion rendered in this case should be stricken from the said opinion, and said opinion made to include a direction for a new trial, in the event that this Court is of the opinion that the verdict of the jury was founded upon insufficient evidence, or, in the alternative, that the judgment for the defendant on the issue presented by the sale of

securities to the Innisfail Corporation be affirmed, if the Court be of the opinion that the verdict of the jury in favor of the defendant upon that issue was founded upon sufficient evidence.

ROBERT E. PRATT.

Sworn to before me this 8th day of March, 1939.

JULIUS ROLINITZKY,

Notary Public, Kings County.

United States Circuit Court of Appeals for the Second Circuit.
John Thomas Smith, Plaintiff-Appellant, against Joseph T. Higgins, Collector of Internal Revenue of the United States for the Third District of New York, Defendant-Appellee. Order and Affidavit. Gregory F. Noonan, United States Attorney, Attorney for Defendant-Appellee. Due service of a copy of the within is hereby admitted. Dated New York, March 9, 1939. Copy received 3/9/39. David Sher, Attorney for Plaintiff-Appellant. Motion granted March 22, 1939. L. H., A. N. H., H. B. C., C. J. J.

United States Circuit Court of Appeals for the Second Circuit

JOHN THOMAS SMITH, PLAINTIFF-APPELLANT

vs.

JOSEPH T. HIGGINS, COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES FOR THE THIRD DISTRICT OF NEW YORK, DEFENDANT-APPELLEE

Affidavit

STATE OF NEW YORK,

County of New York, Southern District of New York, ss:

David Sher, being duly sworn, deposes and says:

I am attorney for the plaintiff herein. The plaintiff's brief (pp. 19-21) urged that this court, if it reversed the trial court, should direct the entry of judgment for the plaintiff rather than order a new trial. The plaintiff's contention was accepted by this court and was set forth in the opinion handed down March 6, 1939. The defendant's order to show cause now seeks to have this part of the opinion stricken. The defendant's brief, however, which was filed after the plaintiff's brief, did not oppose the plaintiff's contention or deal with it at all. It would seem too late for the plaintiff to raise an objection now.

Moreover, the order to show cause is based upon a misapprehension. The plaintiff is entitled to the entry of judgment because under Rule 50 (b) of the new Federal Rules of Civil Procedure, the trial

court was deemed to have reserved decision on the plaintiff's motion for a directed verdict and therefore under the doctrine of *Baltimore & Carolina Line v. Redman*, 295 U. S. 654, this court was empowered to direct the entry of judgment. The plaintiff does not contend and this court did not hold that judgment should be entered because both sides had waived the right to a jury trial by moving for a directed verdict. Of course whenever a jury is for any reason waived, the appellate court has power to order the entry of judgment. Even the doctrine of *Slocum v. New York Life Insurance Co.*, 228 U. S. 364 is not opposed to this proposition. It is only where jury trial has not been waived, where, as in this case, the right to go to the jury has been specifically reserved, that the problem arises at all and that there is any need for Rule 50 (b) or the *Redman* case.

If the defendant is right in his contention that by asking leave to go to the jury he deprived this court of power to order the entry of judgment, then as a practical matter this Court could never direct entry of judgment, for Rule 50 (a) of the new Federal Rules provides that the parties are deemed always to ask leave to go to the jury even when both move for a directed verdict. Under the defendant's contention, Rule 50 (a) would frustrate the very purpose of Rule 50 (b) and would prevent the appellate court from ever invoking the *Redman* doctrine.

There is another reason why this court had a right to direct the entry of judgment. The Seventh Amendment does not apply to actions against the Government. *McElrath v. United States*, 102 U. S. 426, 440. The present action, though nominally against the Collector, "is to all intents and purposes . . . an action against the Government for moneys in the Treasury." *Auffmordt v. Hedden*, 137 U. S. 310, 329. The Seventh Amendment does not, therefore, extend to this action. *Wickwire v. Reinecke*, 275 U. S. 101, 104-5; *Edwin Cigar Co. v. Higgins*, 17 Fed. Supp. 988. Hence the doctrine of *Slocum v. New York Life Insurance Co.*, supra, is inapplicable to this case and, even in the absence of the new Federal Rules, this court would have power to direct the entry of judgment.

The opinion of this Court, filed March 6, 1939, should not, therefore, be amended.

DAVID SHER.

Sworn to before me this 13th day of March 1939.

ADELINE A. GUNN,
Notary Public.

United States Circuit Court of Appeals, Second Circuit

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 23rd day of March, one thousand nine hundred and thirty-nine.

Present: HON. LEARNED HAND, HON. AUGUSTUS N. HAND, HON. HARRIE B. CHASE, Circuit Judges.

JOHN THOMAS SMITH, PLAINTIFF-APPELLANT

vs.

JOSEPH T. HIGGINS, COLLECTOR, ETC., DEFENDANT-APPELLEE

A motion having been made herein by counsel for the appellee to amend the opinion of this court in the respect set forth in the papers filed on such motion;

Upon consideration thereof it is ordered that said motion be and hereby is granted.

WM. PARKIN, *Clerk.*

Order. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 23, 1939. William Parkin, Clerk.

UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages numbered from 1 to 10, inclusive, contain a true and complete copies of originals thereof filed in said Court, in the case of John Thomas Smith, Plaintiff-Appellant, against Joseph T. Higgins, Collector, etc., Defendant-Appellee, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed at the City of New York, in the Southern District of New York, in the Second Circuit, this twenty-fourth day of June, in the year of our Lord one thousand nine hundred and thirty-nine and of the Independence of the said United States the one hundred and sixty-third.

WM. PARKIN, *Clerk.*

By D. E. ROBERT, *Deputy, Clerk.*

[SEAL]

776

Supreme Court of the United States

[Title omitted.]

Order allowing certiorari

Filed October 9, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for argument immediately following No. 49.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

777

In the Supreme Court of the United States

[Title omitted.]

Stipulation for reduction of record

Filed October 19, 1939

It is hereby stipulated and agreed by the parties hereto, by their respective counsel, that in reprinting the record in the above case for use in the United States Supreme Court, the following omissions may be made, they pertaining to issues not now before the Court:

TESTIMONY

1. Omit from page 37, line 6, to page 52, line 13.
2. Omit last question on page 75 to end of 75.
3. Omit from page 76, line 13, to end of page 113.
4. Omit from page 168, line 8, to page 169, line 29.
5. Omit from page 188, line 7, to page 198, line 29.
6. Omit from page 272, line 6, to page 290, line 18.
7. Omit from top of page 294 to page 311, line 8.

EXHIBITS

1. Omit pages 420-426.
2. Omit pages 453-479.
- 778 3. Omit page 617.
4. Omit pages 636-639.
5. Omit from top of page 753 to middle of page 758.

ROBERT H. JACKSON,
Solicitor General,
Counsel for Petitioner.

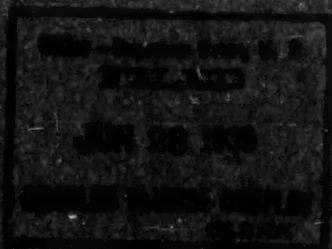
DAVID SHER,
Counsel for Respondent.

○ [File endorsement omitted.]

[Endorsement on cover:] File Nos. 43553, 43554. U. S. Circuit Court of Appeals, Second Circuit. Term No. 146: Joseph T. Higgins, Collector of Internal Revenue for the Third District of New York, Petitioner, vs. John Thomas Smith. Term No. 147: John Thomas Smith, Petitioner, vs. Joseph T. Higgins, Collector of Internal Revenue for the Third District of New York. Petitions for writs of certiorari and exhibit thereto. Filed June 28, 1939. Term Nos. 146 O. T. 1939, 147 O. T. 1939.

U. S. Circuit
Joseph T. Hig-
gins, District of New
York, No. 147. John
H. Higgins, Director of Inter-
ventions for writs
Term Nos.

FILE COPY



146

United States Court of the United States

October Term, 1932

**JOSEPH T. HIGGINS, Collector of Internal Revenue
for the Third District of New York**
vs.

JOHN THOMAS SMITH

**PETITION FOR A WRIT OF HABEAS CORPUS TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT**

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In the Supreme Court of the United States

OCTOBER TERM, 1939

No. —

**JOSEPH T. HIGGINS, COLLECTOR OF INTERNAL REVENUE FOR THE THIRD DISTRICT OF NEW YORK,
PETITIONER**

v.

JOHN THOMAS SMITH

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of Joseph T. Higgins, Collector of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Second Circuit entered in the above cause on March 29, 1939.

OPINIONS BELOW

In the District Court, the case was submitted to a jury and a judgment based upon the verdict was entered May 10, 1938. (R. 33-34.) The opinion of the Circuit Court of Appeals (R. 767-769) is reported in 102 F. (2d) 456.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered March 29, 1939 (R. 770). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the taxpayer is entitled to deduct a "loss" arising out of an alleged sale, without any business purpose, of securities to a corporation wholly owned and controlled by the taxpayer.

STATUTE INVOLVED

This is set forth in the Appendix, *infra*, p. 20.

STATEMENT

The only issue here involved is whether the taxpayer is entitled to deduct a loss allegedly arising out of a sale to his wholly-owned corporation, the Innisfail Corporation, which took place on December 29, 1932. Determination of this issue requires a rather full consideration of the circumstances in which Innisfail was created and of its prior transactions with the taxpayer.

1. *Creation of Innisfail.*—On June 14, 1926, taxpayer caused the formation of Innisfail Corporation, paying the expenses attending its formation, and providing "dummy" incorporators, individuals who were on the legal staff of General Motors

Corporation and thus subordinates of taxpayer, general counsel of that corporation (R: 52, 116-117, 76).

On June 15, 1926, Messrs. Russo, Hogan, Gaynor, and Carroll, all subordinates of taxpayer, three of whom were incorporators, executed letters of resignation from their positions as directors and officers to take effect upon the acceptance of the board of directors of Innisfail Corporation. (R. 130-131.) Taxpayer, president of Innisfail Corporation (R. 169), became a director March 12, 1927, and, with Mr. Russo and Mr. Hogan, constituted the board of directors from that time through the year 1932 (R. 133, 185-186). During all of that time, Mr. Russo's resignation as a director was pending subject to action by the board of directors (R. 186).

All of the stock of Innisfail was issued to taxpayer, save a few shares, issued to these subordinates to qualify them as directors, which were promptly endorsed over to taxpayer (R. 117-118). As consideration for the stock of Innisfail Corporation, taxpayer transferred to it his rights under an option agreement. (R. 118, 370-371).

Pursuant to this option agreement (R. 697-698) between taxpayer and a Mr. Bassett, taxpayer had the right to exchange 5,005 shares of Chrysler preferred for 26,477 shares of Chrysler common (R. 172). Prior to June 14, 1926, when Innisfail Corporation was formed, taxpayer had standing in his own name and in his possession the 26,477 shares

of Chrysler common, and Mr. Bassett had the 5,005 shares of Chrysler preferred, at least as collateral under the option agreement (R. 372-373). On the books of Innisfail, a gain of \$515,000 was recorded as the result of the exchange of 5,005 shares Chrysler preferred for 26,477 shares Chrysler common. (R. 244.) With money furnished by the taxpayer, Innisfail paid taxes of about \$69,000 on such gain. (R. 246-247.) The tax to an individual on such transaction would have been about \$127,000. (R. 244-252.)

The 26,477 shares of Chrysler common stock received in exchange for 5,005 shares Chrysler preferred were not transferred out of the name of the taxpayer into that of Innisfail Corporation. (R. 120.) There was no corporate resolution authorizing the taxpayer to act as nominee for the 26,477 shares of Chrysler common stock. (R. 121.)

2. *Purposes and operations of Innisfail.*—The Innisfail Corporation was formed by taxpayer for the purpose of avoiding inheritance taxes and income taxes (R. 118-119). At the time he formed the Innisfail Corporation, he had in mind the taxable gain which would accrue from the exchange of Chrysler preferred for Chrysler common (R. 119). And he knew that a corporation would not pay a tax on its income which an individual would have had to pay as a result of the dividend payments on the Chrysler stock contributed by him to Innisfail Corporation (R. 142).

When Innisfail Corporation opened a bank account in 1927, a resolution authorized the president [taxpayer] to borrow money and to obtain credit for the corporation with the bank on such terms as might seem to him advisable, and authorized payment from the corporate funds on its check signed by the president (R. 136).

A resolution adopted November 28, 1929 (R. 164), authorized the president "to sell any and all of the securities owned by this corporation at such time and upon such prices, terms, and conditions as he may see fit." No officer other than the taxpayer ever purchased or sold securities for Innisfail Corporation. (R. 162.) There was no instance where the board of directors did not agree with the position of the taxpayer as to the purchase and sale of stock for the corporation (R. 161, 186). At the end of December, 1932, Innisfail Corporation had investments in 11 issues of securities which were carried at a value of \$791,751.92 and of that amount all, except securities having a value of approximately \$30,000, were acquired by the corporation from the taxpayer (R. 150, 182).

No one but the taxpayer ever advanced money to, or withdrew money from Innisfail Corporation. (R. 152.) Innisfail Corporation had no telephone, office space nor official stationery other than those used by the taxpayer personally. (R. 165.) It paid no rent. (R. 159.) Prior to 1934, it had no safe deposit box in its own name (R. 268). It

had no creditors other than the taxpayer. (R. 152, 183.) It had no payroll save payments to Mr. Doty, the taxpayer's secretary, for part-time services; it paid no salaries to officers. (R. 159, 183.)

After testifying that no resolution authorized the taxpayer to act as nominee for Innisfail Corporation, the taxpayer explained (R. 121) that Innisfail Corporation "was a very informal corporation. Everybody in the Innisfail Corporation knew what the situation was and approved of the method of doing business and what was done." The taxpayer further testified that when the Innisfail Corporation was about to lend money to taxpayer, there was no formal meeting to discuss the matter, that the corporation's situation and affairs was known and approved by all the officers and directors, and that this "was an informal corporation" (R. 163).

Taxpayer disposed of his interest in the Innisfail Corporation to members of his family on December 22, 1934 (R. 69-70), subsequent to the passage of the Revenue Act of May 10, 1934.

3. *Earlier Transactions.*—During the years 1926 to 1931, approximately \$400,000 was paid to taxpayer as dividends on the Chrysler stock, standing in his name, the option rights to which he had transferred to Innisfail in exchange for its stock. These dividends were received by the taxpayer personally and the funds were used by him. (R. 134-135, 137, 139, 141, 143, 144, 145, 614-615.) Entries were made on taxpayer's books and on the books

of Innisfail Corporation indicating that the taxpayer owed Innisfail the amount of dividends received in such manner. (R. 134, 614.) In 1932, taxpayer ordered the Chrysler Corporation to pay to Innisfail dividends on Chrysler stock owned by Innisfail and standing in the name of the taxpayer. (R. 146.)

On December 6, 1929, Innisfail Corporation sold to taxpayer 4,412 shares of Chrysler stock and as the result of such sale to him a loss of \$139,000 was reflected on its income tax return. (R. 218-220.) Innisfail had acquired these 4,412 shares through the taxpayer on July 19, 1928, when the taxpayer had paid for the subscriptions to these shares issued in his name, the corporation owing him the amount of the subscriptions. (R. 141, 222.) Entries were made upon the books of taxpayer and the corporation to reflect a debt from the sale of December 6, 1929, reducing the corporation's indebtedness to taxpayer. (R. 141, 614.)

On December 28, 1929, the taxpayer sold to Innisfail Corporation 1,000 shares of stock of Aldebaran Corporation for \$160,800, and on December 31, 1929, 1,900 shares of stock of Hudson Motor Company for \$106,400 (R. 141-142). Taxpayer reported a loss on these shares on his individual return. (R. 142.) He selected these securities in order to reflect a taxable loss (R. 166, 167). Innisfail Corporation at this time had no money with which to purchase such stock. The taxpayer caused entries to be made on his books and on the

books of Innisfail Corporation to record the transactions of sale and increase the indebtedness of Innisfail Corporation to the taxpayer (R. 143, 614). No note was executed, and no interest was charged (R. 143).

During 1930, dividends on the 1,900 shares of Hudson Motor stock which taxpayer had sold to Innisfail in 1929 were received in cash by him. (R. 143.) Entries in his books and the books of Innisfail would record a debt from him to the corporation in connection with the receipt by him of such dividends. (R. 145.)

On September 30, 1930, Innisfail Corporation sold to taxpayer, for \$195,000, 10,000 shares of common stock of Chrysler Corporation, standing in his name (R. 144). This lot of 10,000 shares was part of the original block of 26,477 shares of Chrysler common which taxpayer had transferred to Innisfail in June of 1926 in exchange for all of the stock of Innisfail. (R. 614-615.) An entry was made on the taxpayer's books and the corporation's books to record the sale, and to evidence the debt due by taxpayer, converting a debt due from Innisfail to the taxpayer into a debt owing by taxpayer to Innisfail (R. 144, 615). Taxpayer did not execute a note to the corporation, nor did it charge him interest (R. 144).

The taxpayer owed \$68,364.68 to Innisfail on December 29, 1932 as the result of items reflecting the various transactions between them, principally

those set out above (R. 66). There were balances due between them at the end of each year, Innisfail owing money through September, 1930, and taxpayer owing money thereafter. No note was ever executed by Innisfail Corporation to the taxpayer, nor by him to the corporation, nor was any interest charged by either on balances outstanding (R. 139, 140, 143, 144).

4. *The Transaction in Question.*—On December 29, 1932, the taxpayer caused certain of his personal securities to be transferred into the name of Innisfail Corporation. These securities consisted of the following (R. 7):

- 500 shares Electric Auto-Lite Company
- 500 shares Firestone Tire & Rubber Company
- 332 shares Gaynor Electric Company
- 1,553 shares Investrad Corporation
- 18,324 shares National Baking Company
- 200 shares National Sugar Refining Company

Prior to the transaction the taxpayer had/unrealized losses on these personal securities. When he picked these securities, he had in mind the tax incidence of their selection for sale (R. 167-168). He selected sufficient securities so that their aggregate prevailing market value approximated his indebtedness of \$68,364.68 to Innisfail (R. 66, 167).

The taxpayer was given credit on the books of Innisfail in the amount of \$60,923.80; the sales price determined upon for these securities, fixed at mar-

ket value or book value (R. 7, 72-75). He then gave to Innisfail a check for \$7,440.88 (R. 66, 145-146, 235-236), which represented the difference between the value of the securities and his alleged debt to Innisfail.

The securities were kept in a safe deposit box which was not in the name of Innisfail (R. 115-116, 133, 268). Innisfail received the dividends paid on them (R. 200, 319-320, 322-323, 324-325). It did not reconvey any of such securities to the taxpayer (R. 61).

5. *The Proceedings Below.*—The court charged the jury (R. 377-399) that the jury was to determine whether the transfers were to an entity which had an existence and identity separate and apart from the taxpayer (R. 386-387), but definitely stated to the jury that the mere fact that taxpayer owned all the stock did not prove that the corporation did not have such separate existence (R. 388). The jury was instructed (R. 389) not to draw any unfavorable inference because of any tax avoidance motive on the part of the taxpayer. The court charged that the mere fact that a corporation does business only with its sole stockholder is not enough to deny its separate existence, but that this is a circumstance the jury is entitled to consider in ascertaining whether there was in truth and fact an actual and substantial sale or group of sales involved in this case (R. 396-397).

Finally, the court charged that the losses contemplated by the tax laws were actual and real and

sustained in a transaction having a regular business purpose (R. 397); that a mere gesture without the vital intent to change ownership is not to be recognized as a sale because it has some of the appearances of a sale (R. 398); that the property after being sold must be outside the control and domination of the seller and outside his power of disposition (R. 398).

After considering the evidence and the inferences to be drawn therefrom, in the light of the court's instructions, the jury returned a general verdict for the Government on the issue here involved.¹ (R. 402.) The court below ruled that the taxpayer's motion for a directed verdict should have been granted. It reversed the judgment, and remanded the cause. It originally directed entry of verdict for the taxpayer (R. —) but on motion for rehearing directed a new trial (R. 770).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the taxpayer's motion for a directed verdict should have been granted.

2. In holding that a sale to a corporate entity must be recognized for tax purposes regardless of the nature of the corporation or the reality or business substance of its transactions.

3. In holding that a loss is sustained upon a sale to a corporation, which is wholly owned and con-

¹ The jury returned a verdict for the taxpayer with respect to the fraud penalty imposed by the Commissioner (R. 402).

trolled by the vendor, was formed and used to avoid taxes, and has engaged in transactions practically with the vendor alone, the sale having no business purpose.

4. In limiting the principles enunciated in *Gregory v. Helvering*, 293 U. S. 465, strictly to a reorganization case.

5. In holding that there was no evidence or legitimate inference to support the verdict of the jury on the question of the reality or finality of the alleged sale of securities by the taxpayer to his wholly-owned corporation.

6. In weighing the evidence and in reaching a conclusion upon the facts (that there was an actual sale) contrary to that reached by the jury.

7. In reversing the judgment of the trial court and in remanding for a new trial.

REASONS FOR GRANTING THE WRIT

The Circuit Court of Appeals held that the Innisfail Corporation was a separate legal entity from the taxpayer, though it was a one-man, wholly-owned corporation which purchased, held and sold securities as he caused it to, and that the sale of securities by the taxpayer to the corporation, without any reacquisition by the taxpayer, was an actual sale to a real buyer and resulted in a deductible loss to the taxpayer.

1. Our first proposition assumes that the court below was correct in holding that there was a fully completed sale of the stock to Innisfail, a legal en-

tity separate from the taxpayer. But we insist that the Revenue Acts do not provide for recognition of a loss resulting from a transfer to a purchaser wholly owned by and controlled by the seller, in a transaction having no business purpose or significance. The decision of the court below exalts form above substance in a way contrary to the intent of the tax laws. *Gregory v. Helvering*, 293 U. S. 465; *Minnesota Tea Co. v. Helvering*, 302 U. S. 609; *United States v. Phellis*, 257 U. S. 156; *Lucas v. Earl*, 281 U. S. 111.

The transaction in the present case lies outside the plain intent of Section 23(e), permitting the deduction from gross income of losses sustained during the taxable year. Under this section losses must be realized by some closed and completed, identifiable event determining the existence and amount of the loss. The loss must be a real loss, "actual and present." *Burnet v. Huff*, 288 U. S. 156, 161; cf. *Helvering v. Owens*, 305 U. S. 468. A taxpayer cannot claim a loss merely because his securities have declined in value. *New York Ins. Co. v. Edwards*, 271 U. S. 109, 116. Nor can he take the deduction by making a formal sale of the securities, retaining dominion and control (*Shoenberg v. Commissioner*, 77 F. (2d) 446 (C. C. A. 8th)), as through an understanding permitting him to repurchase (*Nicholson v. Commissioner*, 90 F. (2d) 978 (C. C. A. 8th); *Commissioner v. Dyer*, 74 F. (2d) 685 (C. C. A. 2d), certiorari denied, 296

U. S. 586; *Commissioner v. Riggs*, 78 F. (2d) 1004 (C. C. A. 3d), certiorari denied, 296 U. S. 637).

Similarly in the case of a transfer to a wholly-owned and controlled corporation, without a business purpose (where any agreement to repurchase would be wholly unnecessary), the loss cannot be deducted. The taxpayer in every practical sense retains full dominion and all the advantages of ownership, while the corporation lacks even that independent judgment which might be attributable to a wholly-owned corporation charged with the destiny of a separate business enterprise. The Revenue Act contemplates genuine losses, recognized as such by the business world, not those resulting from sales to a wholly-owned and controlled corporation, with no place in regular business channels. Deductible losses might as well be allowed when the taxpayer on his books transfers an investment from one account to another.

In *Gregory v. Helvering*, 293 U. S. 465, the taxpayer's wholly-owned corporation transferred securities to a new corporation, organized to avoid taxes, which issued all its shares to the taxpayer, and which was subsequently dissolved and liquidated by the distribution of the securities to the taxpayer. The Court held that although the transaction had the form of a corporate reorganization, it was without any business purpose and the non-recognition provisions of the income tax law were inapplicable. The Court said that although the

motive of tax avoidance was not pertinent, the transaction upon its face was outside the plain intent of the statute. This principle was extended in *Minnesota Tea Co. v. Helvering*, 302 U. S. 609, where the Court ignored that feature of a reorganization plan pursuant to which money received by a corporation was turned over to its stockholders subject to their agreement to assume and pay off an indebtedness of the corporation in the same amount.

The court below regarded *Gregory v. Helvering*, 293 U. S. 465, as a decision of limited significance, stating that it "had to do with a pretended reorganization not within the scope of that statute" (R. 769). But the principle established in that case necessarily reaches beyond the particular section of the Revenue Act under which it arose.

The decision below is in conflict with *Commissioner v. Griffiths*, 103 F. (2d) 110 (C. C. A. 7th), now pending on the taxpayer's petition for certiorari, No. 49, this term, where the taxpayer defrauded in a sale of stocks, was about to make a profitable settlement, and, in order to avoid taxes, first organized a wholly-owned corporation and sold the stock, together with his cause of action, to the corporation on an installment basis. The court pointed out that the corporation had no legitimate business purpose of substantial character, relied upon the principle of the *Gregory* case instead of restricting it to its particular situation,

and refused to permit the transfer to the wholly-owned corporation to dictate tax consequences. Accord: *Loewenberg v. Commissioner*, 39 B. T. A. (No. 119), promulgated May 10, 1939. The applicability of the *Gregory* decision to a sale made to a controlled corporation in order to establish a loss is also indicated by *Wickwire v. United States* (E. D. Mich.), decided February 4, 1939, 1939 Prentice-Hall Federal Tax Service, vol. 1, par. 5.274. See also *Groves v. Commissioner*, 99 F. (2d) 179 (C. C. A. 4th); *Continental Oil Co. v. Jones*, 26 F. Supp. 694 (W. D. Okla.); *Jackson v. Commissioner*, 39 B. T. A. (No. 136), promulgated May 23, 1939.

In the case at bar, as in the *Gregory* and *Griffiths* cases, the wholly-owned corporation was formed to avoid taxes (R. 118-119, 142), and used for that purpose (R. 142, 166, 167). Although in the *Gregory* and *Griffiths* cases the corporation was formed to handle the particular transaction scrutinized by the court, it hardly can be deemed material that in the case at bar the corporation had been previously organized and had engaged in various transactions prior to 1932. If the principle of the *Gregory* case were limited to what might be called single-transaction corporations, it would place a premium on a protracted as opposed to a sporadic use of the corporate fiction for tax avoidance purposes.

In substance, the court below held that any formally perfect sale to a wholly-owned corporation is sufficient to control tax consequences. The Circuit

Court of Appeals for the Seventh Circuit, in the *Griffiths* case, held to the contrary. The only possible distinction which we can see is that in the *Griffiths* case the corporation was a mere conduit by which the taxpayer disposed of property to a third party, while in a case such as the one at bar (unless the taxpayer exercises his unrestricted power to cause a resale to himself) title to the stock remained in the corporation. This conceivable distinction does not seem to be sound and was not suggested in any way by the court below.

2. We have assumed above that there was a completed sale of the stock to Innisfail, but that such a sale as this cannot result in a deductible loss. But if the court below were correct in holding that anything which amounts to a "sale" is sufficient to permit a deductible loss, then this transaction cannot be termed a sale.

The court below recognized that under its theory the crucial inquiry was whether the taxpayer could show a real sale to an actual buyer, and it stated that this was shown (R. 769). However, the jury had been instructed (R. 388) to find if the corporation really functioned as something separate and apart from the taxpayer; to ascertain whether there was in fact an actual sale involved in this case (R. 397), or whether the transaction was a mere gesture without the vital intent to change ownership (R. 398). The jury's general verdict represents a finding that there was no sale, undoubtedly embodying a conclusion that at the time of the sale the tax-

payer had no intention to part with ownership of the securities, or had a present intention to leave them in such a status that he could reacquire them whenever he wished. The jury's verdict was amply supported by inferences to be drawn from the circumstances surrounding the nature of the alleged delivery and consideration, together with the history of the transactions between the parties. The finding of fact that there was no sale should stand on appeal. *Commissioner v. Bank of California, etc.*, 80 F. (2d) 389 (C. C. A. 9th). We submit that the court below, under its theory, committed flagrant error in weighing the evidence and in substituting its conclusion for that of the jury on the question of whether or not there was a real sale to an actual buyer. Cf. *Helvering v. Nat. Grocery Co.*, 304 U. S. 282, and *McCaughn v. Real Estate Co.*, 297 U. S. 606.

3. It may be appropriate to consider the bearing of Section 24 (a) (6) of the Revenue Act of May 10, 1934, c. 277, 48 Stat. 680, *infra*, p. 20, which provides that no deduction shall be allowed for loss from sales between an individual and a corporation in which he owns more than 50% in value of the outstanding stock. This section does not indicate that the decision below is correct. The section goes much further than the Government's position here, making no distinctions in terms of business purpose or the extent of control by the shareholder. In any event an intent to close up possible loopholes (H. Rep. No. 704, 73d Cong., 2d Sess., p. 23; S. Rep.

No. 558, 73d Cong., 2d Sess., p. 27) is consistent with uncertainty as to the previous law and a sense of caution, as much as with an alleged recognition of its shortcomings.

The 1934 amendment does not demonstrate that the case at bar is unimportant. The decision below, in conflict with the opinion in the *Griffiths* case, states a limitation on the principle of *Gregory v. Helvering* which has application to situations not covered by the amendment.² It may also be noted that this Court has granted a writ of certiorari to resolve a conflict of circuits notwithstanding the repeal of the statute involved and although no similar case was pending or could arise.³

CONCLUSION

Therefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

ROBERT H. JACKSON,

Solicitor General.

JUNE, 1939.

² Thus, the *Griffiths* and *Loewenberg* cases involved a question of spreading gain, rather than deduction for loss, and *Continental Oil Co. v. Jones* involved an excise tax.

³ *Cahn v. United States*, 296 U. S. 558; 297 U. S. 691; see also *Santa Monica Int. Park Co. v. United States*, 99 F. (2d) 450 (C. C. A. 9th), certiorari granted, No. 606, 1938 Term, February 27, 1939, dismissed on stipulation of counsel March 29, 1939; *United States Trust Co. v. Commissioner*, 296 U. S. 557, 481.

APPENDIX

Revenue Act of 1932, c. 209, 47 Stat. 169:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

(e) *Losses by Individuals.*—Subject to the limitations provided in subsection (r) of this section, in the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

- (1) if incurred in trade or business; or
- (2) if incurred in any transaction entered into for profit, though not connected with the trade or business;

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 24. ITEMS NOT DEDUCTIBLE.

(a) *General Rule.*—In computing net income no deduction shall in any case be allowed in respect of—

(6) Loss from sales or exchanges of property, directly or indirectly, (A) between members of a family, or (B) except in the case of distributions in liquidation, between an individual and a corporation in which such individual owns, directly or indirectly, more than 50 per centum in value of the outstanding stock. For the purpose of this paragraph—(C) an individual shall be considered as owning the stock owned, directly or indirectly, by his family; and (D) the family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

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In the Supreme Court of the United States

OCTOBER TERM, 1939

No. 146

JOSEPH T. HIGGINS, COLLECTOR OF INTERNAL REVENUE FOR THE THIRD DISTRICT OF NEW YORK,
PETITIONER

v.

JOHN THOMAS SMITH

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

In the District Court, the case was submitted to a jury and a judgment based upon the verdict was entered May 10, 1938 (R. 17). The opinion of the Circuit Court of Appeals (R. 338-340) is reported in 102 F. (2d) 456.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered March 29, 1939 (R. 341). The petition for certiorari was filed June 28, 1939, and was

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granted October 9, 1939. The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the taxpayer is entitled to deduct a "loss" arising out of an alleged sale, without any business purpose, of securities to a corporation wholly owned and controlled by the taxpayer.

STATUTE INVOLVED

Revenue Act of 1932, c. 209, 47 Stat. 169:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * * *

(e) *Losses by Individuals.*—Subject to the limitations provided in subsection (r) of this section, in the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

- (1) if incurred in trade or business; or
- (2) if incurred in any transaction entered into for profit, though not connected with the trade or business; * * *

STATEMENT

On December 29, 1932, the respondent, John Thomas Smith, made a purported sale of securities to his wholly owned corporation, the Innisfail Corporation. Those securities had cost him \$234,002.31 (R. 4) and the stated price at which he under-

took to sell them to his corporation was \$60,923.80 (R. 4). He claimed the difference as a "loss" in computing his net income for tax purposes. The Commissioner of Internal Revenue ruled against him, whereupon respondent paid the tax and brought suit for refund in the United States District Court for the Southern District of New York, where the case was tried before a jury.

The full import of the transaction here in question and the significance of the proceedings below will perhaps be made clearer by a somewhat detailed consideration of the circumstances in which Innisfail was created and of its prior transactions with the taxpayer.

1. *Creation of Innisfail.*—On June 14, 1926, taxpayer caused the formation of Innisfail Corporation, paying the expenses attending its formation, and providing "dummy" incorporators, individuals who were on the legal staff of General Motors Corporation and thus subordinates of taxpayer, general counsel of that corporation (R. 19, 34, 32).

On June 15, 1926, Messrs. Russo, Hogan, Gaynor, and Carroll, all subordinates of taxpayer, three of whom were incorporators, executed letters of resignation from their positions as directors and officers to take effect upon the acceptance of the board of directors of Innisfail Corporation (R. 42). Taxpayer became president and a director of Innisfail Corporation on March 12, 1927 (R. 208-209), and, with Mr. Russo and Mr. Hogan, constituted the board of directors from that time through

the year 1932 (R. 74-75). During all of that time, Mr. Russo's resignation as a director was pending subject to action by the board of directors (R. 75).

All of the stock of Innisfail was issued to taxpayer, say a few shares, issued to these subordinates to qualify them as directors, which were promptly endorsed over to taxpayer (R. 34). As consideration for the stock of Innisfail Corporation, taxpayer allegedly transferred to it his rights under an option agreement (R. 34, 155-156). There seems to be some question as to whether the option was exercised by the taxpayer prior to the creation of the corporation, but in any event the gain realized upon the exercise of the option was attributed to the corporation for tax purposes in 1926.

Pursuant to this option agreement (R. 305) between taxpayer and a Mr. Bassett, taxpayer had the right to exchange 5,005 shares of Chrysler preferred for 26,477 shares of Chrysler common (R. 66). Prior to June 14, 1926, when Innisfail Corporation was formed, taxpayer had standing in his own name and in his possession the 26,477 shares of Chrysler common, and Mr. Bassett had the 5,005 shares of Chrysler preferred, at least as collateral under the option agreement (R. 157). On the books of Innisfail, a gain of \$515,000 was recorded as the result of the exchange of 5,005 shares of Chrysler preferred for 26,477 shares of Chrysler common (R. 103). With money furnished by the taxpayer, Innisfail paid taxes of about \$69,000 on

such gain (R. 104-105). The tax to an individual with respect to the profit realized by Innisfail during that year would have been about \$127,000¹ (R. 103, 107).

The 26,477 shares of Chrysler common stock received in exchange for 5,005 shares of Chrysler preferred were not transferred out of the name of the taxpayer into that of Innisfail Corporation (R. 36). There was no corporate resolution authorizing the taxpayer to act as nominee for the 26,477 shares of Chrysler common stock (R. 36).

2. *Purposes and operations of Innisfail*.—The Innisfail Corporation was formed by taxpayer for the purpose of avoiding inheritance and income taxes (R. 35). At the time he formed the Innisfail Corporation, he had in mind the taxable gain which would accrue from the exchange of Chrysler preferred for Chrysler common (R. 35). And he knew that a corporation would not pay a tax on its income which an individual would have had to pay as a result of the dividend payments on the Chrysler stock contributed by him to Innisfail Corporation (R. 49).

When Innisfail Corporation opened a bank account in 1927, a resolution authorized the president (taxpayer) to borrow money and to obtain credit for the corporation with the bank on such terms

¹ That figure includes, in addition to the tax with respect to the \$515,000 gain on the exchange of the Chrysler securities, the tax on about \$39,000 dividends paid thereafter upon the securities received in exchange (R. 103, 107).

as might seem to him advisable, and authorized payment from the corporate funds on its check signed by him (R. 45-46).

A resolution adopted November 28, 1929 (R. 63), authorized the president "to sell any and all of the securities owned by this corporation at such time and upon such prices, terms, and conditions as he may see fit." No officer other than the taxpayer ever purchased or sold securities for Innisfail Corporation (R. 61). There was no instance where the board of directors did not agree with the position of the taxpayer as to the purchase and sale of stock for the corporation (R. 61, 75). At the end of December 1932 Innisfail Corporation had investments in 11 issues of securities, which were carried at a value of \$791,751.92, and of that amount all, except securities having a value of approximately \$30,000, were acquired by the corporation from the taxpayer (R. 54, 73).

No one but the taxpayer ever advanced money to, or withdrew money from, Innisfail Corporation (R. 55). Innisfail Corporation had no telephone, office space, or official stationery other than those used by the taxpayer personally (R. 63). It paid no rent (R. 60). Prior to 1934, it had no safe-deposit box in its own name (R. 116). It had no creditors other than the taxpayer (R. 55, 73). It had no pay roll save payments to Mr. Doty, the taxpayer's secretary, for part-time services; it paid no salaries to officers (R. 60, 73).

After testifying that no resolution authorized the taxpayer to act as nominee for Innisfail Corporation, the taxpayer explained (R. 36) that Innisfail Corporation "was a very informal corporation. Everybody in the Innisfail Corporation knew what the situation was and approved of the method of doing business and what was done." The taxpayer further testified that when the Innisfail Corporation was about to lend money to taxpayer, there was no formal meeting to discuss the matter; that the corporation's situation and affairs were known and approved by all the officers and directors, and that this "was an informal corporation" (R. 62).

Taxpayer disposed of his interest in the Innisfail Corporation to members of his family on December 22, 1934 (R. 29), subsequent to the passage of the Revenue Act of 1934, *infra*.

3. *Earlier Transactions*.—During the years 1926 to 1931, approximately \$400,000 was paid to taxpayer as dividends on the Chrysler stock, standing in his name, the option rights to which he had transferred to Innisfail in exchange for its stock. These dividends were received by the taxpayer personally and the funds were used by him (R. 44, 46, 48, 49, 51, 53, 265-267). Entries were made on taxpayer's books and on the books of Innisfail Corporation indicating that the taxpayer owed Innisfail the amount of dividends received in such manner (R. 44, 265). In 1932, taxpayer ordered

the Chrysler Corporation to pay to Innisfail dividends on Chrysler stock owned by Innisfail and standing in the name of the taxpayer (R. 52).

On December 6, 1929, Innisfail Corporation sold to taxpayer 4,412 shares of Chrysler stock and as the result of such sale to him a loss of \$139,000 was reflected on its income-tax return (R. 88-89). Innisfail had acquired these 4,412 shares through the taxpayer on July 19, 1928, when the taxpayer had paid for the subscriptions to these shares issued in his name, the corporation owing him the amount of the subscriptions (R. 49, 91). Entries were made upon the books of the taxpayer and the corporation to reflect a debt from the sale of December 6, 1929, reducing the corporation's indebtedness to taxpayer (R. 48, 265).

On December 28, 1929, the taxpayer sold to Innisfail Corporation 1,000 shares of stock of Aldebaran Corporation for \$160,800, and on December 31, 1929, 1,900 shares of stock of Hudson Motor Company for \$106,400 (R. 49). Taxpayer reported a loss on these shares on his individual return (R. 49). He selected these securities in order to reflect a taxable loss (R. 63, 64). Innisfail Corporation at this time had no money with which to purchase such stock. The taxpayer caused entries to be made on his books and on the books of Innisfail Corporation to record the transactions of sale and increase the indebtedness of

Innisfail Corporation to the taxpayer (R. 50, 265). No note was executed, and no interest was charged (R. 50).

During 1930, dividends on the 1,900 shares of Hudson Motor stock which taxpayer had sold to Innisfail in 1929 were received in cash by him (R. 50). Entries in his books and the books of Innisfail would record a debt from him to the corporation in connection with the receipt by him of such dividends (R. 51).

On September 30, 1930, Innisfail Corporation sold to taxpayer, for \$195,000, 10,000 shares of common stock of Chrysler Corporation, standing in his name (R. 50). This lot of 10,000 shares was part of the original block of 26,477 shares of Chrysler common previously described (*supra*, p. 4), which Innisfail had received in June of 1926 (R. 265-267). An entry was made on the taxpayer's books and the corporation's books to record the sale, and to evidence the debt due by taxpayer, converting a debt due from Innisfail to the taxpayer into a debt owing by taxpayer to Innisfail (R. 50, 267). Taxpayer did not execute a note to the corporation, nor did it charge him interest (R. 50).

The taxpayer owed \$68,364.68 to Innisfail on December 29, 1932, as the result of items reflecting the various transactions between them, principally those set out above (R. 26). There were balances due between them at the end of each year, Innisfail

owing money through September 1930, and taxpayer owing money thereafter. No note was ever executed by Innisfail Corporation to the taxpayer nor by him to the corporation; nor was any interest charged by either on balances outstanding (R. 47, 48, 50, 51).

4. *The Transaction in Question.*—On December 29, 1932, the taxpayer caused certain of his personal securities to be transferred into the name of Innisfail Corporation. These securities consisted of the following (R. 4):

- 500 shares Electric Auto-Lite Company.
- 500 shares Firestone Tire & Rubber Company.
- 332 shares Gaynor Electric Company.
- 1,553 shares Investrad Corporation.
- 18,324 shares National Baking Company.
- 200 shares National Sugar Refining Company.

Prior to the transaction, the taxpayer had unrealized losses on these personal securities. When he picked these securities, he had in mind the tax consequences of their selection for sale (R. 63, 64). His indebtedness to Innisfail at that time was \$68,364.68, and the securities which he selected for transfer to Innisfail had an aggregate market or book value of \$60,923.80 (R. 26, 64, 4).

The taxpayer was given credit on the books of Innisfail in the amount of \$60,923.80, the sales price determined upon for these securities, fixed at their market or book value (R. 4, 30-31). He

then gave to Innisfail a check for \$7,440.88 (R. 26, 51, 99), which represented the difference between the value of the securities and his alleged debt to Innisfail.

The securities were kept in a safe-deposit box which was not in the name of Innisfail (R. 33, 44, 116). Innisfail received the dividends paid on them (R. 77, 125-126, 128, 129). It did not reconvey any of such securities to the taxpayer (R. 24).

5. *The Proceedings Below.*—The District Court charged the jury (R. 159-174) that the jury was to determine whether the transfers were to an entity which had an existence and identity separate and apart from the taxpayer (R. 165-166), but definitely stated to the jury that the mere fact that taxpayer owned all the stock did not prove that the corporation did not have such separate existence (R. 166). The jury was instructed (R. 167) not to draw any unfavorable inference because of any tax avoidance motive on the part of the taxpayer. The court charged that the mere fact that a corporation does business only with its sole stockholder is not enough to deny its separate existence, but that this is a circumstance the jury is entitled to consider in ascertaining whether there was in truth and fact an actual and substantial sale or group of sales involved in this case (R. 172).

Finally, the court charged that the losses contemplated by the tax laws were actual and real and sustained in a transaction having a regular busi-

ness purpose (R. 173); that a mere gesture without the vital intent to change ownership is not to be recognized as a sale because it has some of the appearances of a sale (R. 173); that the property after being sold must be outside the control and domination of the seller and outside his power of disposition (R. 173).

After considering the evidence and the inferences to be drawn therefrom, in the light of the court's instructions, the jury returned a general verdict for the Government on the issue here involved² (R. 176). The Circuit Court of Appeals ruled that the taxpayer's motion for a directed verdict should have been granted. It reversed the judgment and remanded the cause. It originally directed entry of verdict for the taxpayer (R. 342-346), but on motion for rehearing directed a new trial (R. 341).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the taxpayer's motion for a directed verdict should have been granted.
2. In holding that a sale to a corporate entity must be recognized for tax purposes regardless of the nature of the corporation or the reality or business substance of its transactions.

² The jury returned a verdict for the taxpayer with respect to the fraud penalty imposed by the Commissioner (R. 176).

3. In holding that a loss is sustained upon a sale to a corporation, which is wholly owned and controlled by the vendor, was formed and used to avoid taxes, and has engaged in transactions practically with the vendor alone, the sale having no business purpose.

4. In limiting the principles enunciated in *Gregory v. Helvering*, 293 U. S. 465, strictly to a reorganization case.

5. In holding that there was no evidence or legitimate inference to support the verdict of the jury on the question of the reality or finality of the alleged sale of securities by the taxpayer to his wholly owned corporation.

6. In weighing the evidence and in reaching a conclusion upon the facts (that there was an actual sale) contrary to that reached by the jury.

7. In reversing the judgment of the trial court and in remanding for a new trial.

SUMMARY OF ARGUMENT

I

The transactions here under review are outside the scope of Section 23 (e) which grants deductions for losses "sustained" during the taxable year. Those provisions contemplate that a deductible loss must be realized by some closed event determining the existence and amount thereof, and that a "sale" may constitute such a closed event only where there is a final disposition of the

property in question. It is our position that a purported sale of securities, without any business purpose, to a wholly owned corporation cannot, as a matter of law, be such a final disposition as to create a realized loss. In such a situation the taxpayer in every practical sense retains full dominion and all the advantages of ownership over the securities which he has purported to sell. Loss deductions are granted by Congress as a matter of grace, and this Court has held that to be deductible the loss must be actual, present, and real.

There is an abundance of authority, of which *Gregory v. Helvering*, 293 U. S. 465, is a striking example, to the effect that a mere ritualistic compliance with the literal terms of the statute will not suffice to give the taxpayer hoped-for advantages that Congress plainly intended for others. Both the corporate reorganization provisions involved in the *Gregory* case and the loss provisions herein were aimed at alleviating the taxpayer's burden. To grant the loss deduction under circumstances where no real loss has been sustained would be to pervert the purpose of these provisions in the same manner that the taxpayer unsuccessfully attempted by ingenious manipulation to misuse the reorganization provisions in the *Gregory* case.

II

In any event, even if a sale without business purpose to a wholly owned corporation is not, as a matter of law, outside the scope of Section 23(e),

the particular "sales" involved herein do not constitute deductible losses. The District Judge instructed the jury to determine whether there was in fact an actual sale, and he charged that a mere gesture without the vital intent to change ownership is not to be recognized as a sale merely because the transaction has some of the appearances of a sale. The jury's general verdict for the Government represents a finding that there were no genuine sales, that the taxpayer had no real intention of relinquishing dominion over the securities—a finding similar to that in *Mitchell v. Commissioner*, 89 F. (2d) 873, 874-875 (C. C. A. 2d), certiorari denied, 302 U. S. 723 (reversed on other grounds, *sub nom. Helvering v. Mitchell*, 303 U. S. 391), where sales between husband and wife were held to be spurious. The Circuit Court of Appeals was therefore without power to overthrow that verdict, which was supported by so overwhelming a mass of evidence.

ARGUMENT

Introductory.—The Government's position in this case rests upon two independent grounds. First, we will contend that, as a matter of law, no deduction is allowable under Section 23 (e) where a taxpayer transfers securities without any business purpose to a wholly owned corporation; that such a transfer, even though technically a sale, is nevertheless not such a final disposition of those securities as to bring about a "loss" within the meaning of Section 23 (e). Second, we will

contend that there was not even a "sale" to the wholly owned corporation; that evidence was adduced before the jury tending to show the absence of a genuine sale (compare *Mitchell v. Commissioner*, 89 F. (2d) 873, 874-875 (C. C. A. 2d), certiorari denied, 302 U. S. 723 (reversed on other issues, *sub nom. Helvering v. Mitchell*, 303 U. S. 391), involving spurious sales between spouses), and that in the light of that evidence the verdict of the jury should not have been upset by the Circuit Court of Appeals.

I

A SALE WITHOUT BUSINESS PURPOSE TO A WHOLLY OWNED CORPORATION CANNOT, AS A MATTER OF LAW, GIVE RISE TO A DEDUCTIBLE LOSS

1. The alleged sales of securities to Innisfail, organized and controlled throughout by the taxpayer for the purpose of avoiding taxation, having no business purpose, were not such sales as could give rise to such real losses as were contemplated by Congress in granting deductions from gross income. We submit that the Circuit Court of Appeals erred in concluding in effect that any formally complete sale is sufficient to produce a deductible loss, even though the sale be made to the taxpayer's wholly owned corporation, having no business purpose or activity other than the participation in the taxpayer's admitted scheme to avoid taxes.

At the very outset it should be observed that the taxpayer is here seeking the benefit of a deduction.

But "every deduction from gross income is allowed as a matter of legislative grace" (*White v. United States*, 305 U. S. 281, 292), and "only as there is clear provision therefor can any particular deduction be allowed". (*New Colonial Co. v. Helvering*, 292 U. S. 435, 440). See also *Woolford Realty Co. v. Rose*, 286 U. S. 319, 326. And where the taxpayer has boldly undertaken to create artificial losses by paper transactions, it is particularly important to keep in mind the recent words of this Court that "It is in the public interest that no one should be permitted to avoid his just share of the tax burden except by positive command of law." *Stone v. White*, 301 U. S. 532, 537. Cf. *Morsman v. Helvering*, 90 F. (2d) 18 (C. C. A. 8th), certiorari denied, 302 U. S. 701. We respectfully submit that such command is wholly lacking here.

Our argument on this branch of the case assumes that the court below was correct in holding that there was a fully completed sale of the stock to Innisfail, a legal entity separate from the taxpayer. But we insist that the Revenue Acts do not provide for recognition of a loss resulting from a transfer to a purchaser wholly owned and controlled by the seller, in a transaction having no business purpose or significance. The decision of the court below exalts form above substance in a way contrary to the purpose of the tax laws. Cf. *Gregory v. Helvering*, 293 U. S. 465, 470; *Minnesota Tea Co. v.*

Helvering, 302 U. S. 609, 613-614; *United States v. Phellis*, 257 U. S. 156, 168; *Lucas v. Earl*, 281 U. S. 111, 114; *Southern Pacific Co. v. Lowe*, 247 U. S. 330; *Gulf Oil Corp. v. Lewellyn*, 248 U. S. 71.

2. The transaction in the present case lies outside the plain scope of Section 23 (e) which allows the deduction from gross income of losses "sustained" during the taxable year. Under this section, losses must be realized by some closed and completed identifiable event determining the existence and amount of the loss. The loss must be a real loss, "actual and present." *Burnet v. Huff*, 288 U. S. 156, 161; cf. *Helvering v. Owens*, 305 U. S. 468. A taxpayer cannot claim a loss merely because his securities have declined in value. *New York Ins. Co. v. Edwards*, 271 U. S. 109, 116. Nor can he take the deduction by making a formal sale of the securities, retaining dominion and control (*Schoenberg v. Commissioner*, 77 F. (2d) 446 (C. C. A. 8th), certiorari denied, 296 U. S. 586), as through an understanding permitting him to repurchase (*Nicholson v. Commissioner*, 90 F. (2d) 978 (C. C. A. 8th); *Commissioner v. Dyer*, 74 F. (2d) 685 (C. C. A. 2d), certiorari denied, 296 U. S. 586; *Commissioner v. Riggs*, 78 F. (2d) 1004 (C. C. A. 3d), certiorari denied, 296 U. S. 637). Similarly in the case of a transfer without a business purpose to a wholly owned and controlled corporation (where any agreement to repurchase would be wholly unnecessary), there can be no deductible

loss. Compare *Powell v. Commissioner*, 94 F. (2d) 483 (C. C. A. 1st), involving a sale to a trust of which the taxpayer was the sole trustee. The taxpayer in every practical sense retains full dominion and all the advantages of ownership, while the corporation lacks even that independence of judgment which might be attributable to a wholly-owned corporation charged with the destiny of a separate business enterprise. The Revenue Act contemplates genuine losses, recognized as such by the business world, not fictitious losses resulting from transfers by the taxpayer to his incorporated pocketbook. Deductible losses might as well be allowed when the taxpayer on his books transfers an investment from one account to another.

This Court has made it clear that the loss provisions must be construed realistically; that in attempting to spell out a formula for loss deductions, Congress did not intend to permit such deductions where the taxpayer in reality suffers no loss; and that the statutory provisions should be interpreted in the light of that dominant purpose.

Thus, in *United States v. Flannery*, 268 U. S. 98, the taxpayer had purchased securities prior to March 1, 1913, which he sold in 1919 for more than their cost but for less than their value on March 1, 1913. The applicable provisions of the Revenue Act of 1918 stated that in computing loss on sale of property acquired prior to March 1, 1913, the fair market value as of that date should be taken

as the basis. The taxpayer, applying these provisions literally, claimed a loss in the amount of the difference between the March 1, 1913, value and the sale price. This Court held, however, that since the sale price was in excess of taxpayer's original cost, no real loss had been sustained, and denied the deduction. A like result was reached in *McCaughn v. Ludington*, 268 U. S. 106.

In *Helvering v. Owens*, 305 U. S. 468, the taxpayer's property was destroyed by a casualty. The applicable statutory provisions allowed a loss deduction, in an amount based upon cost, if the provisions were to be read literally. However, this Court held that the taxpayer could deduct only the loss actually sustained, i. e., measured from the market value of the property immediately prior to destruction.

These cases demonstrate that in granting deductions on account of losses Congress was referring to genuine losses, and that the statutory provisions containing the allowance are applicable only where and to the extent that the losses are real.

The facts in the instant case strikingly reveal the absence of any genuine loss, and show that the so-called sales to Innisfail were really not such final dispositions of the securities as to entitle the taxpayer to his claimed deductions.

Innisfail was created and persistently used, with negligible exceptions, for the specific purpose of serving respondent in his efforts to avoid taxes.

In the year in question he realized large amounts of income that would ordinarily have been subject to tax unless offset by the phantom sales. While those sales may have been real in the narrow sense that title passed, they were wholly unreal in the sense that respondent never parted nor ever intended to part with his unfettered control over the securities in question.

Innisfail was obviously not organized for the purpose of trading in the outside business world. The record shows that it was created and used for an entirely different purpose. The trading was practically all with the taxpayer, who ignored the corporate entity in substantially every transaction he had with it. From the creation of Innisfail until the year in question the taxpayer took all the dividends and cash that came in, ignored the corporation's bank account, and appropriated the funds to his own uses; but at the same time he was able to place the dividends on the books as belonging to the corporation and avoid the surtax that he would have had to pay if he had returned them as his own (R. 44-51).

The taxpayer owned all of the stock in the corporation, and his codirectors were men employed in his office under him and subservient to him. They had no interest in the corporation and drew no salaries. They were dummy directors, acquiescent at all times to the taxpayer's wishes.

No one but the taxpayer ever advanced money to, or withdrew money from, Innisfail. Innisfail had no telephone, office space, or official stationery. It paid no rent. Prior to 1934, it had no safe deposit box in its own name. It had no creditors other than the taxpayer. It had no pay roll save payments to Mr. Doty, the taxpayer's secretary, for part-time services; it paid no salaries to officers. In the words of the taxpayer himself (R. 36), Innisfail Corporation "was a very informal corporation. Everybody in the Innisfail Corporation knew what the situation was and approved of the method of doing business and what was done."

It seems plain that, under these circumstances, a transfer of securities to respondent's alter ego could not, as a matter of law, constitute a final disposition of those securities for the purpose of establishing a deductible loss, and that the statutory provisions granting the deduction were never meant to apply to such an empty ritual. A contrary holding would mean that Congress in providing for the deduction of losses *sustained* during the taxable year was nevertheless willing to sanction so obvious a device for circumventing the condition it so carefully spelled out. And this Court has, on at least several comparable occasions, indicated that such a purpose is not to be imputed to Congress. *Woolford Realty Co. v. Rose*, 286 U. S. 319, 329-330; *Carbon Steel Co. v. Lewellyn*, 251 U. S. 501, 504. Cf. *Braden Steel Corp. v. Commissioner*, 78 F. (2d) 808, 810 (C. C. A. 10th).

3. In *Gregory v. Helvering*, 293 U. S. 465, the taxpayer's wholly owned corporation transferred securities to a new corporation, organized to avoid taxes, which issued all its shares to the taxpayer, and which was subsequently dissolved and liquidated by the distribution of the securities to the taxpayer. The Court held that although the transaction had the form of a corporate reorganization, it was without any business purpose and the non-recognition provisions of the income-tax law were inapplicable. This principle was extended in *Minnesota Tea Co. v. Helvering*, 302 U. S. 609, 613-614. Cf. *Helvering v. Elkhorn Coal Co.*, 95 F. (2d) 732 (C. C. A. 4th), certiorari denied, 305 U. S. 605; *Electrical Securities Corp. v. Commissioner*, 92 F. (2d) 593 (C. C. A. 2d); *Starr v. Commissioner*, 82 F. (2d) 964 (C. C. A. 4th); *S. Silberman & Sons v. Commissioner*, 76 F. (2d) 360, 362 (C. C. A. 7th); *S. A. MacQueen Co. v. Commissioner*, 67 F. (2d) 857 (C. C. A. 3d); *Helvering v. Gordon*, 87 F. (2d) 663 (C. C. A. 8th); *Pennsylvania Indemnity Co. v. Commissioner*, 77 F. (2d) 92 (C. C. A. 3d), certiorari denied, 296 U. S. 588; *Cogan v. Commissioner*, 36 B. T. A. 639, affirmed, 97 F. (2d) 996 (C. C. A. 2d).

In the *Gregory* case, there was a ritualistic compliance with the literal language of the statute, but this Court construed the reorganization provisions as referring only to reorganizations with a business purpose. The Court then examined the substance

of the situation and concluded that the corporation was nothing more than a contrivance (p. 469)—

having no business or corporate purpose—a mere device which put on the form of a corporate reorganization as a disguise for concealing its real character, and the sole object and accomplishment of which was the consummation of a preconceived plan, not to reorganize a business or any part of a business, but to transfer a parcel of corporate shares to the petitioner.

To paraphrase the above language, the corporation here was a contrivance or mere device which the taxpayer sought to employ as a transferee in a purported sale, disguising his real object of taking a loss on depreciated securities without in any way releasing those securities to the outside business world. The true character of the control reserved by him is apparent from the occasions in previous years when he reacquired title by the mere juggling of credit and debit entries.

The court below regarded *Gregory v. Helvering*, *supra*, as a decision of limited significance, stating that it “had to do with a pretended reorganization not within the scope of that statute” (R. 340). But the principle established in that case necessarily reaches beyond the particular section of the Revenue Act under which it arose.³ There is no

³ A note of warning to taxpayers was sounded in this connection in Paul, *Studies in Federal Taxation* (1937), p. 149:

“It should not be forgotten by taxpayers close to the line that the method of statutory interpretation adopted by the

reason why the reorganization provisions should be singled out for special treatment, and it would indeed be extraordinary if Congress had intended that a realistic approach be reserved exclusively for those provisions.

Both the reorganization and the loss provisions are aimed at relief from taxation, and it should not be presumed that Congress meant to grant such relief where none is called for by the facts at hand. The deduction on account of realized losses was intended to alleviate the taxpayer's burden. To grant it under circumstances where no loss has actually been *sustained* and where a wholly owned corporation is employed merely to give the appearance of a final disposition of the securities in question, would be, we submit, to pervert the purpose of those provisions. Both here and in the *Gregory* case the meaningless use of the corporate device in order to pay lip service to the statutory conditions should not and cannot entitle the taxpayer to the relief that was plainly intended for others.⁴ There

Supreme Court in the *Gregory* case with reference to the "reorganization" provision may be adopted by the Supreme Court and other courts in construing other provisions."

⁴ The unduly narrow view which the Second Circuit has taken of the *Gregory* case is apparent from an extended dictum in *Electrical Securities Corp. v. Commissioner*, 92 F. (2d) 593, 595 (bottom of first column). The very situation which the court there discussed and stated to be outside the scope of the *Gregory* case was held to be within the principle of the *Gregory* case in *Helvering v. Elkhorn Coal Co.*, 95 F. (2d) 732 (C. C. A. 4th), certiorari denied, 305 U. S. 605, rehearing denied, 305 U. S. 670.

is nothing in the *Gregory* decision which even suggests that the reorganization provisions alone have a monopoly on this type of statutory construction.

The principle of the *Gregory* case has been applied in *Commissioner v. Griffiths*, 103 F. (2d) 110 (C. C. A. 7th), certiorari granted October 9, 1939. (No. 49, present Term). There the taxpayer, defrauded in a purchase of securities, was about to make a profitable settlement, and, in order to avoid taxes, first organized a wholly owned corporation and sold those securities, together with his cause of action, to the corporation on an installment basis. The court pointed out that the corporation had no legitimate business purpose of substantial character, relied upon the principle of the *Gregory* case instead of restricting it to its particular situation, and refused to permit the transfer to the wholly owned corporation to dictate tax consequences. Accord: *Loewenberg v. Commissioner*, 39 B. T. A. 844. The applicability of the *Gregory* decision to a sale made to a controlled corporation in order to establish a loss is also indicated by *Wickwire v. United States*, 27 F. Supp. 724 (E. D. Mich.). And the number and range of cases outside the field of reorganizations that have treated the principle of the *Gregory* case as applicable are indeed impressive. See e. g., *Groves v. Commissioner*, 99 F. (2d) 179, 183 (C. C. A. 4th); *Continental Oil Co. v. Jones*, 26 F. Supp. 694, 699-704 (W. D. Okla.); *Jackson v. Commissioner*, 39 B. T. A. 937; *Slayton v. Commissioner*, 76 F. (2d) 497, 500 (C. C. A. 1st),

certiorari denied, 296 U. S. 586; *S. Silberman & Sons v. Commissioner*, 76 F. (2d) 360, 362 (C. C. A. 7th); *Nicholson v. Commissioner*, 90 F. (2d) 978, 980 (C. C. A. 8th); *Ossorio v. United States*, 18 F. Supp. 959, 964 (C. Cls.), certiorari denied, 302 U. S. 713; *Patty v. Helvering*, 98 F. (2d) 717, 719 (C. C. A. 2d); *Jones v. Page*, 102 F. (2d) 144, 145 (C. C. A. 5th), certiorari denied, October 9, 1939, No. 179, present Term; *Morsman v. Helvering*, 90 F. (2d) 18, 22 (C. C. A. 8th), certiorari denied, 302 U. S. 701.⁵

In the case at bar, as in the *Gregory* and *Griffiths* cases, the wholly owned corporation was formed to avoid taxes (R. 35, 49), and used for that purpose (R. 49, 64, 65). Although in the *Gregory* and *Griffiths* cases the corporation was formed to handle the particular transaction scrutinized by the court, it hardly can be deemed material that in the case at bar the corporation had been previously organized and had engaged in various transactions prior to 1932. If the principle of the *Gregory* case were limited to what might be called single-transaction corporations, it would place a premium on a protracted as opposed to a sporadic use of the corporate shell for tax-avoidance purposes.

⁵ However, in *Smith v. Commissioner*, 40 B. T. A. 387, involving the instant taxpayer's tax liability for prior years, the Board ruled against the Commissioner, over the protests of a vigorous dissent written by the Board member who heard the case and concurred in by ~~for~~ ^{four} other members.

4. Our position does not necessarily involve a disregard of the corporate fiction. It may be conceded, as in the *Gregory* case (p. 469), that when Innisfail was organized, a "valid corporation was created." And it may further be assumed *arguendo* that technical title actually passed to the corporation in the various sales which respondent undertook to execute to it. The gist of our position is that such "sales" did not and could not constitute such final dispositions of the securities, so as to bring about a "loss" within the meaning of the statutory provisions. Our contention is therefore not in conflict with the results reached in such cases as *Dalton v. Bowers*, 287 U. S. 404; *Burnet v. Clark*, 287 U. S. 410; *Burnet v. Commonwealth Imp. Co.*, 287 U. S. 415; and *Klein v. Board of Supervisors*, 282 U. S. 19. In those cases, corporations were employed to conduct certain affairs, and this Court held that the taxpayers were bound by the tax consequences which flowed from the use of corporations. The Court there simply refused to disregard the corporate entity where those interested in the enterprise had selected the corporate form and were seeking to avoid the consequences of that choice. The instant case does not require a disregard of the corporate fiction; we merely urge that no deduction is given by Section 23 (e) under these circumstances.

But even if it were necessary to disregard the corporate fiction there is persuasive authority that

would justify such a course. In *McCaskill Co. v. United States*, 216 U. S. 504, 515, this Court noted a "growing tendency" to look beyond the corporate form. See also *United States v. Lehigh Valley R. R. Co.*, 220 U. S. 257, 272-274; *Chicago, M. & St. P. Ry. Co. v. Minn. Civic Assn.*, 247 U. S. 490, 500-501.⁶ And in two cases arising under the first of our modern income tax statutes, this Court pierced the corporate veil. *Southern Pacific Co. v. Lowe*, 247 U. S. 330; *Gulf Oil Corp. v. Lewellyn*, 248 U. S. 71. In *New Colonial Co. v. Helvering*, 292 U. S. 435, where the taxpayer sought unsuccessfully to disregard the corporate entity, the Court nevertheless plainly stated that (p. 442):

* * * the separate identity may be disregarded in exceptional situations where it otherwise would present an obstacle to the due protection or enforcement of public or private rights, * * *

We respectfully submit that the instant case presents just such a situation as was referred to in the *New Colonial Co.* decision, and that *Dalton v. Bowers*, 287 U. S. 404, and like cases are to be assimilated to the *New Colonial Co.* case itself.

⁶ Cf. *United States v. Reading Co.*, 253 U. S. 26; *Northern Securities Co. v. United States*, 193 U. S. 197; *Standard Oil Co. v. United States*, 221 U. S. 1, 75; *United States v. U. S. Steel Corp.*, 251 U. S. 417.

⁷ Compare *Gardiner v. Treasurer & Receiver General*, 225 Mass. 355, where the court refused to take cognizance of a

5. The taxpayer may, perhaps, rely upon Section 24 (a) (6) of the Revenue Act of 1934 (c. 277, 48 Stat. 680)* which specifically provides that no deduction shall be allowed for loss from sales between an individual and a corporation in which he owns more than 50% in value of the outstanding stock; and may contend that the appearance of these new provisions in the 1934 Act should be taken as evidence that the contrary was the law prior thereto. However, we submit that the new

specialty created corporation for tax purposes, saying (p. 369):

"The identity of purpose and unity of interest whether the trustees are considered as administering the trust as individuals or as incorporated under the name of the Gardiner Investment Company, is complete. We are satisfied that in making these contracts they dealt with themselves and intended to retain and did retain full control of the legal title to the shares of stock which in reality comprised the trust property transferred to the petitioners as executors to be by them distributed to the legatees. * * *

* Section 24 (a) (6) provides:-

"SEC. 24. ITEMS NOT DEDUCTIBLE.

"(a) *General Rule.*—In computing net income no deduction shall in any case be allowed in respect of—

"(6) Loss from sales or exchanges of property, directly or indirectly, (A) between members of a family, or (B) except in the case of distributions in liquidation, between an individual and a corporation in which such individual owns, directly or indirectly, more than 50 per centum in value of the outstanding stock. For the purpose of this paragraph—(C) an individual shall be considered as owning the stock owned, directly or indirectly, by his family; and (D) the family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants."

provisions have, at most, a doubtful bearing upon this case.

It is equally arguable that the new provisions, at least to the extent that they deal with a situation like the present one, are merely declaratory of existing law and simply clarify rather than change the law. *Helvering v. N. Y. Trust Co.*, 292 U. S. 455, 468-469; *Helvering v. Twin Bell Syndicate*, 293 U. S. 312, 322. Cf. *Keifer & Keifer v. R. F. C.*, 306 U. S. 381; *Hopkins Savings Assn. v. Cleary*, 296 U. S. 315, 333-335; *Burnet v. Guggenheim*, 288 U. S. 280, 287-288. While it is true that the committee reports accompanying the bill that became the Revenue Act of 1934 spoke of Section 24 (a) (6) as closing up possible "loopholes" (H. Rep. No. 704, 73d Cong., 2d Sess., p. 23; S. Rep. No. 558, 73d Cong., 2d Sess., p. 27), that purpose is nevertheless not contrary to our position here. An intention to close loopholes is equally consistent with uncertainty as to existing law and a sense of caution, as with an alleged recognition of the law's shortcomings. Indeed, it would be most ironical if the solicitude of Congress in meeting an evil with particularity should be taken to have foreclosed the consideration of doubts under existing law which might be resolved in accord with the law as enacted for the future.

Moreover, in some respects Section 24 (a) (6) actually goes far beyond existing law. It removes loss deductions in the case of all sales between members of a family. And in stating that no loss shall

be recognized in the case of sales or exchanges between an individual and his corporation, no distinction is drawn between sales which have a business purpose and those which have not. Further, Section 24 (a) (6) is operative even where the individual owns only 50% of the stock, and within that 50% may be included any stock owned by members of his family. Thus, in speaking of closing up "loopholes," the Congressional Committees were doubtless referring to those instances in which the new provisions plainly went beyond existing law. But in their broad sweep these new provisions undoubtedly embraced some situations which could be regarded as already covered by existing law, and we submit that the instant case presents such a situation.

II

THE CIRCUIT COURT OF APPEALS ERRED IN HOLDING THAT THERE WAS NO EVIDENCE OR LEGITIMATE INFERENCE TO SUPPORT THE VERDICT OF THE JURY ON THE QUESTION OF THE REALITY OR FINALITY OF THE ALLEGED SALES TO INNISFAIL

In Point I we contended that, as a matter of law, a sale without business purpose to a wholly owned corporation cannot produce a deductible loss. In somewhat similar manner we undertake to support the Government's position in *Griffiths v. Commissioner*, No. 49, and *Commissioner v. Johnson*, No. 317, urging that the issue involved is not one of fact but rather of the legal effect of the undisputed evidentiary facts and that such an issue is reviewable by an appellate court. Cf. *Helvering v. Tex-Penn*

Co., 300 U. S. 481, 491; *Helvering v. Rankin*, 295 U. S. 123, 131; *Bogardus v. Commissioner*, 302 U. S. 34, 39.

However, if we should be wrong on Point I and if this Court should hold that a sale without business purpose to a wholly owned corporation is not necessarily outside the loss provisions as a matter of law, then we will contend further in Point II that the particular "sales" here involved were really not sales at all, that the taxpayer at the time never intended to make any bona fide transfers relinquishing control, that the jury verdict in favor of the Government embraces such a finding, and that the Circuit Court of Appeals was powerless to disregard that verdict which was supported by substantial evidence. In short, our position is that the so-called sales lacked reality in the same way that the sales between husband and wife were held to lack reality in *Mitchell v. Commissioner*, 89 F. (2d) 873, 874-875 (C. C. A. 2d), certiorari denied, 302 U. S. 723 (reversed on other issues, *sub nom. Helvering v. Mitchell*, 303 U. S. 391).

On this branch of the case there is likewise no necessity for disregarding the corporate fiction any more than there is need for merging the personalities of the spouses in the *Mitchell* case. The essential element in both is the absence of genuineness of the sales as evidenced by the vendor's intention not to relinquish dominion. This is a question of fact, and the jury verdict should not have been disturbed.

The District Court's charge to the jury on this issue indicates throughout (R. 164 *et seq.*) that he was asking it to determine the bona fides of these transactions. He had denied the Government's request for a directed verdict (R. 159), and was treating the case as one that should turn upon the particular facts. We believe that he erred in refusing to grant that request, and our Point I attempts to demonstrate why it should have been granted. But even assuming that he correctly turned the case over to the jury, we submit that its verdict should be conclusive. He instructed the jury "to ascertain whether there was in truth and in fact an actual and substantial sale" (R. 172), and charged that "a mere gesture without the vital intent to change ownership is not to be recognized as a sale merely because the transaction has some of the appearances of a sale" (R. 173).

The jury's general verdict represents a finding that there was no genuine sale, that the taxpayer had no real intention of relinquishing dominion over the securities. And such a conclusion is supported by an overwhelming mass of evidence in the record, including the circumstances surrounding the nature of the alleged delivery, together with the entire panorama of dealings between the taxpayer and Innisfail from the date of its creation, in which the respondent persistently treated securities standing in the name of Innisfail as his own, and in which appearances were maintained merely by

meaningless book entries. The court below, therefore, plainly erred when it brushed aside the verdict of the jury. Cf. *McCaughn v. Real Estate Co.*, 297 U. S. 606; *Helvering v. Nat. Grocery Co.*, 304 U. S. 282.

CONCLUSION

The decision of the court below is erroneous and should be reversed.

Respectfully submitted.

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Special Assistants to the Attorney General.

OCTOBER 1939.

APR 9 1938

Supervisor of the State Police

Albany, New York

James J. [unclear] of Federal Bureau of
Investigation, New York

Paymaster

John Thomas Galt,

Respondent

In Pursuant to a [unclear] of [unclear] to the
[unclear] [unclear] [unclear] [unclear] [unclear]
[unclear] [unclear] [unclear]

REPLY TO [unclear] AT [unclear]

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IN THE
Supreme Court of the United States
October Term, 1939.
No. 146.

JOSEPH T. HIGGINS, Collector of Internal Revenue for
the Third District of New York,
Petitioner,

v.

JOHN THOMAS SMITH,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

Opinion Below.

The opinion of the Circuit Court of Appeals (R. 767-9) is reported in 102 Fed. (2d) 456.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered March 29, 1939 (R. 770). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented.

Whether the taxpayer is entitled to deduct a loss arising from the sale of securities to a wholly owned corporation.

Statutes Involved.

The statutes involved are set forth in the Appendix *infra*, page 15.

Statement.

The petition seeks review of a decision of the United States Circuit Court of Appeals for the Second Circuit reversing a judgment entered in accordance with the verdict of a jury returned in the Southern District of New York in an action brought for a tax refund.

On March 11, 1935 the Commissioner of Internal Revenue notified the taxpayer of the determination of a deficiency for the year 1932 of \$35,189.44 and a fraud penalty of \$17,594.72, making a total of \$52,784.16. (R. 36-7, 416-419). The deficiency was based on the disallowance of losses arising from the sale of securities to Innisfail Corporation and to the taxpayer's wife. The taxpayer paid the alleged deficiency and filed a claim for refund. Upon the Commissioner's failure to rule on the claim within six months, the taxpayer instituted this action. The trial was by jury. Both sides moved for a directed verdict and both motions were denied (R. 375-6). The jury found for the taxpayer on the issue of the sale of stock to his wife and on the issue of fraud but found for the Collector on the issue of the sale to

Innisfail Corporation (R. 402-3). Judgment for the taxpayer was entered in the sum of \$28,935.49 (R. 33-4).

The taxpayer appealed from that portion of the judgment which denied recovery for the loss asserted on the sale to Innisfail Corporation (R. 705-6). The Collector appealed from that portion of the judgment which granted recovery for the loss asserted on the sale to the taxpayer's wife but raised only the question of the proper cost basis of the stock sold (R. 753-4). The Collector did not appeal from that portion of the judgment which granted the taxpayer recovery of the fraud penalty.

The appeal and cross-appeal by the taxpayer and the Collector from the adverse portions of the judgment were heard by the Circuit Court of Appeals for the Second Circuit in January, 1939. The Court of Appeals reversed the judgment of the District Court on both issues, holding that the taxpayer was entitled to the loss on the sale to Innisfail Corporation and was not entitled to the cost basis he reported on the sale to his wife (R. 767-9). The Court of Appeals first ordered judgment to be entered in accordance with the opinion but, upon motion of the Collector, amended its opinion and ordered a new trial (R. 771-5).

In *Smith v. Higgins*, No. 147, this term, the taxpayer petitions for certiorari on the ground that the Court of Appeals erred in remanding the case for a new trial instead of ordering the entry of judgment. The taxpayer's petition also seeks review of the Court of Appeals ruling on cost basis. In the instant proceeding, the Collector petitions for certiorari on the

4
ground that the Court of Appeals erred in holding the taxpayer entitled to the loss arising from the sale of securities to Innisfail Corporation. The facts bearing on the Collector's petition may be summarized as follows:

Innisfail Corporation (hereinafter called "Innisfail") was organized under the laws of New Jersey in 1926 (R. 52, 427-35) and the taxpayer became the owner of all of its capital stock (R. 117). On December 29, 1932 the taxpayer sold and delivered a group of securities to Innisfail. Certificates for all of these securities were endorsed for transfer by the taxpayer to Innisfail (R. 54-61, 439-51). Requisite transfer stamps were attached in the amount of \$1732.72 (R. 343-5, 439-51). The stock was transferred on the books of each corporation from the taxpayer to Innisfail (R. 314-16, 318-19, 321-3, 640-3, 646-7) and new certificates were issued to Innisfail (R. 200). All the sales were made at prevailing market prices (R. 72-5) for a total of \$60,923.80 (R. 64-5). The securities had cost the taxpayer a total of \$234,002.31 (R. 237-40), which entailed a loss of \$174,811.23, including allowance for stamp taxes. The taxpayer maintained a running account with Innisfail (R. 202-36, 614-16, 621-33). Immediately before the sale he owed Innisfail \$68,364.68 (R. 66, 614-15), principally as the result of cash dividends which he had received from certain Chrysler and Hudson stock, owned by Innisfail but registered in his name as nominee in accordance with common corporate practice (R. 118-22, 165, 202-13, 317, 614-15). As the purchase price of the securities which the taxpayer sold to Innisfail was \$60,923.80, the taxpayer gave Innisfail a check for \$7440.88 to balance the account (R. 66, 145-6, 177, 235-6, 452, 614-15). The

Board of Directors of Innisfail approved the acquisition of the securities by Innisfail from the taxpayer and the prices paid (R. 67).

Innisfail has received and kept all of the dividends on the securities purchased from the taxpayer (R. 200, 313, 315, 319-20, 322-3, 324-5). Innisfail has never reconveyed any of these securities to the taxpayer (R. 61). It was the taxpayer's unqualified intention to transfer title from himself to Innisfail and to retain no interest in the securities whatsoever (R. 61). It was at all times his purpose that Innisfail be an absolutely independent entity and that it stand on its own bottom (R. 128) as much as General Motors Corporation, of which the taxpayer was and is Vice-President and General Counsel (R. 76). At the time Innisfail made the purchase from the taxpayer, it had securities valued at \$791,751.92 and cash of \$17,115.03 (R. 150, 541).

In December, 1934, the taxpayer sold all of his Innisfail stock to his children (R. 68-70, 610-11) at a price equal to the amount that the stock had originally cost him and paid a gift tax of \$35,325.30 on the difference between that price and the value of the stock at the time of the sale (R. 70-2, 612-13).

The taxpayer and Innisfail each kept a full set of books, consisting of a cash book, journal, ledger, check book and security record (R. 187). These books were periodically audited by Barrow, Wade, Guthrie & Co., certified public accountants (R. 173). They verified the taxpayer's indebtedness to Innisfail (R. 330) and the losses on the very sales by the taxpayer to Innisfail involved in this case (R. 334-6, 350, 667, 669-76). They found all the books and records of both the taxpayer and Innisfail to be in standard

form and made no reservations in their audit reports (R. 347-8).

Upon these undisputed facts,¹ the taxpayer based his motion for a directed verdict and upon them the Court of Appeals held that the Trial Court should have granted it.

Argument.

1. The Circuit Court of Appeals decision allowing the taxpayer a loss on the sale to Innisfail is not homage to empty formalism but adherence to a consistent pattern without which the law of taxation would be unintelligible. It is only one of the many consequences resulting from transactions between a corporation and its sole stockholder. Gain realized upon a sale by a corporation to its sole stockholder is taxable. *Burnet v. Commonwealth Improvement Company*, 287 U. S. 415, 419. "The fact that it had only one stockholder seems of no legal significance." Assets received on the complete liquidation of a corporation constitute taxable income to the sole stockholder. *France Co. v. Commissioner*, 88 Fed. (2d) 917 (C. C. A. 6); *Coxe v. Handy*, 24 Fed. Supp. 178 (D. Del.); *John K. Greenwood*, 1 B. T. A. 291. Losses sustained by a one-man corporation may not be reported in the individual income tax return of the sole stockholder. *Dalton v. Bowers*, 287 U. S. 404; *Menihan v. Commissioner*, 79 Fed. (2d) 304 (C. C. A. 2), cert. den. 296 U. S. 651. Periods during which a sole

¹ The Trial Judge charged the jury that "the evidence in this case is substantially undisputed, so that you are not confronted with the task of deciding what probably happened. What you will have to do is to take this evidence under careful consideration and decide what it proves" (R. 377).

stockholder and a corporation successively hold property may not be combined to make up the two years required for the creation of a capital asset. *Webber v. Knox*, 97 Fed. (2d) 921 (C. C. A. 8).

The record in this very case reveals a striking illustration of the reality of the corporate entity. Some years ago the taxpayer purchased 1,900 shares of Hudson stock for \$158,000. In 1929 he sold the stock to Innisfail for \$106,400. In 1932 Innisfail sold it in the open market for \$12,000. The taxpayer, of course, did not and could not report Innisfail's heavy loss in his 1932 income tax return (R. 290-1). Thus it is that the entity of a wholly owned corporation has real significance and that it does not always rebound to the sole stockholder's benefit. The economic tax result is to shift the seller's cost basis and to substitute what the purchaser pays. This is the same in all cases regardless of *descriptio personarum*.

As Mr. Justice Holmes observed with characteristic felicity in *Klein v. Board of Supervisors*, 282 U. S. 19, 24:

"But it leads nowhere to call a corporation a fiction. If it is a fiction it is a fiction created by law with intent that it should be acted on as if true. The corporation is a person and its ownership is a nonconductor that makes it impossible to attribute an interest in its property to its members."

2. Four Courts of Appeals have been called upon to pass on the precise question involved in this petition. All have held the loss allowable. *Jones v. Helvering*, 71 Fed. (2d) 214 (App. D. C.), cert. den. 293 U. S. 583; *Commissioner v. Eldridge*, 79 Fed. (2d) 629 (C. C. A. 9); *Commissioner v. McCreery*,

83 Fed. (2d) 817 (C. C. A. 9); *Helvering v. Johnson*, 1939, C. C. H. Vol. 4, Par. 9542, decided June 1, 1939 (C. C. A. 8); *Foster v. Commissioner*, 96 Fed. (2d) 130 (C. C. A. 2), decided almost a year before the case at bar.²

Indeed, in *Gregory v. Helvering*, 293 U. S. 465, 469, the decision relied upon by the government in its petition, this Court gave explicit endorsement to *Jones v. Helvering*, *supra*, when it declared, "The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted. * * * *Jones v. Helvering*, 63 App. D. C. 204; 71 F. (2d) 214, 217."

Commissioner v. Griffiths, 103 Fed. (2d) 110 (C. C. A. 7), now pending on petition for certiorari, No. 49, this term, is not at war with the decision of the Court of Appeals in the case at bar. In the *Griffiths* case, the taxpayer, having been defrauded in the purchase of certain stock, arranged to settle his claim by reselling the stock to the vendor. Instead of proceeding to consummate the transaction, he organized a corporation and on the same day "sold" it the stock and the fraud claim on the installment basis. The following day the corporation "sold" the stock to the vendor. The taxpayer himself, however, signed the instrument of transfer to the vendor and personally executed and transferred to the vendor a release from the fraud claim. The taxpayer received the check for the proceeds of the sale and endorsed it

² The Board of Tax Appeals has consistently reached the same conclusion. *David Stewart*, 17 B. T. A. 604; *Corrado & Galiardi, Inc.*, 22 B. T. A. 847; *Edward Securities Corporation*, 30 B. T. A. 918; *Ralph Hochstetter*, 34 B. T. A. 791.

to the corporation. Plainly, this was a case of an assignment of income after realization and has nothing in common with the question involved in the case at bar. The taxpayer in the *Griffiths* case realized income and *then* conveyed it to the corporation. It was an arrangement "by which the fruits are attributed to a different tree from that on which they grew". *Lucas v. Earl*, 281 U. S. 111.

3. The government would deny the taxpayer the right to report the loss because of the alleged absence of a "business purpose" and asks the Court to apply the doctrine of *Gregory v. Helvering*, 293 U. S. 465, *supra*. That case limits the scope of the reorganization provisions to transactions having a "business purpose", *i. e.*, those involving the reorganization of a business. Certainly this Court did not intend to introduce any such test for the determination of losses, especially since the *Gregory* opinion, as we have just seen, specifically approved *Jones v. Helvering*, *supra*. The Revenue Act itself sets up the standards by which losses are to be tested. Section 23 provides that there shall be allowed, as deductions, losses sustained during the taxable year "(1) if incurred in trade or business; or (2) if incurred in any transaction entered into for profit, though not connected with the trade or business".³ The importation of the test of "business purpose" into the loss provision would not only flout the intent of Congress by abrogating subdivision (2), but would render the application of the provision a hopeless riddle. The government's construction would indeed deny a loss to a taxpayer who sold stock in the open market for the sole purpose of being able to report a loss in his income tax return.

³ See Appendix, page 15.

The *Gregory* case as well as *Minnesota Tea Co. v. Helvering*, 302 U. S. 609, also cited in the government's petition, dealt with efforts to make transactions appear to be different from what they really were. In the *Gregory* case a corporation was created only to be destroyed. In the *Minnesota Tea* case money was "distributed" to stockholders, but they agreed to use it to pay the corporation's creditors. In both cases this Court held that the reality varied from the appearance. The taxpayer willingly applies this test to the case at bar. Was the sale to Innisfail real or sham? The uncontradicted evidence establishes that Innisfail actually acquired title to the securities, that it paid the taxpayer full consideration at prevailing market prices, that it received and kept the income from the securities and that it never reconveyed a single share to the taxpayer.

The government makes a further attack on the validity of the sale by arguing that the taxpayer, as sole stockholder of Innisfail, had the power to effect a reconveyance of the securities. In addition to the fact that the taxpayer did not effect such a reconveyance and that he put it out of his power to do so by disposing of all the stock of Innisfail, there is an equally devastating answer to the government's contention. *The taxpayer could have retaken the securities only in a taxable transaction*, for the reconveyance could be only by way of a dividend or upon liquidation of Innisfail. In either case, a substantial tax would have been incurred. Far from prejudicing the public revenue by any such manoeuvre, the taxpayer would have incurred substantial additional tax thereby. Surely it will not be suggested that the taxpayer's "power" to repurchase the securities from Innisfail is of any significance for in that

event no sale of a listed security would ever be final for there is always "power" to repurchase such securities.

4. The government's petition anticipates but does not answer another insuperable objection to its plea. Section 24(a)(6) of the Revenue Act of 1934, c. 277, 48 Stat. 680, *infra*, page 15, was enacted for the very purpose of precluding losses like those involved in this case. In view of the frequent difficulty of sifting real from sham sales in such instances, Congress wisely eliminated such deductions altogether.⁴ For honest taxpayers this presents no greater hardship than the economic waste of having to pay unnecessary commissions to brokers for finding a buyer and seller who find themselves and have agreed upon the market price on which both are willing to trade. The

⁴ The Report of the Committee on Ways and Means of the House of Representatives states at page 23, referring to Section 24(a)(6):

"The bill adds to existing law a paragraph which will deny losses to be taken in the case of sales or exchanges of property between members of a family, or between a shareholder and a corporation in which such shareholder holds a majority of the voting stock. . . .

"Experience shows that the practice of creating losses through transactions between members of a family and close corporations has been frequently utilized for avoiding the income tax. It is believed that the proposed change will operate to close this loophole of tax avoidance." (House Rep. No. 704, 73d Congress, 2d Session.)

The Reports of the Finance Committee of the Senate and of the subcommittee of the House Ways and Means Committee are to the same effect. (Senate Report No. 558, 73d Congress, 2d Session, p. 27; Hearings before Committee on Ways and Means, Revenue Revision 1934, p. 134.) See also remarks of Senator Harrison, Chairman of Senate Finance Committee; 78 Congressional Record, page 5847. *Cf.* Report on Stock Exchange Practices, Senate Committee on Banking and Currency. (Senate Report No. 1455, 73d Congress, 2d Session, pp. 321-327.)

fact that it took a statute to remove the exemption is clear proof that theretofore the test was whether the claimed loss was real rather than feigned. *Foster v. Commissioner*, 96 Fed. (2d) 130, *supra*.

Besides dealing a decisive blow to the merits of the government's petition, the 1934 amendment renders the question academic. A case involving the construction of a statute obsolete for five years hardly commends itself to a writ of certiorari. The government's argument that despite the 1934 amendment the case remains important is curiously inconsistent with its argument, in opposition to the taxpayer's petition, No. 147, that there is no occasion for reconsidering the *Slocum* decision because the new Federal Rules of Civil Procedure render the *Slocum* doctrine academic—this although the court below declined to apply the new Rules on the authority of the *Slocum* case. The 1934 amendment does put at rest the very question raised by the government's petition. The new Rules were intended to put the *Slocum* case at rest but will not so long as the decision below on this point is allowed to stand.⁵

The mere fact that the 1934 amendment may not settle the point involved in the *Griffiths* case, No. 49, this term, *supra*, is no reason for granting certiorari in the case at bar.

⁵ The government's attempt in No. 147 to justify the decision below on the ground that the trial was held before the effective date of the new Rules is entirely beside the point. The Court of Appeals expressly held that the new Rules were applicable to the case at bar, as an action pending (Cross-petition for Certiorari, No. 147, p. 3). The Collector's motion for amendment of the opinion was based entirely on the *Slocum* case (R. 771-4).

CONCLUSION.

The petition should be denied.

Dated, New York, N. Y., August 7, 1939.

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APPENDIX.

REVENUE ACT OF 1932, C. 209, 47 STAT. 169:

Sec. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

(e) *Losses by Individuals*.—Subject to the limitations provided in subsection (r) of this section, in the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

- (1) if incurred in trade or business; or
- (2) if incurred in any transaction entered into for profit, though not connected with the trade or business; * * *

REVENUE ACT OF 1934, C. 277, 48 STAT. 680:

Sec. 24. ITEMS NOT DEDUCTIBLE.

(a) *General Rule*.—In computing net income no deduction shall in any case be allowed in respect of—

- (6) Loss from sales or exchanges of property, directly or indirectly, (A) between members of a family, or (B) except in the case of distributions in liquidation, between an individual and a corporation in which such individual owns, directly or indirectly, more than 50 per centum in value of the outstanding stock. For the purpose of this paragraph— (C) an individual shall be considered as owning the stock owned, directly or indirectly, by his family; and (D) the family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

NOV 14 1939

CHARLES ELMORE CROPLEY
CLERK

IN THE
Supreme Court of the United States

October Term, 1939.

No. 146.

JOSEPH T. HIGGINS, Collector of Internal Revenue for
the Third District of New York,

Petitioner,

v.

JOHN THOMAS SMITH,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT.

BRIEF FOR RESPONDENT

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BRIEF FOR RESPONDENT

Opinions Below.

In the District Court, the case was submitted to a jury and judgment upon the verdict was entered May 10, 1938 (R. 33-4). The opinion of the Circuit Court of Appeals (R. 767-9) is reported in 102 Fed. (2d) 456.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered March 29, 1939 (R. 770). The petition for certiorari was filed June 28, 1939 and was granted

October 9, 1939. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented.

Whether the taxpayer is entitled to deduct a loss arising from the sale of securities to a wholly owned corporation.

Statutes Involved.

The statutes involved are set forth in the Appendix, *infra*, pages 33-5.

Statement.

Proceedings Below.

This case is here on certiorari to review a decision of the United States Circuit Court of Appeals for the Second Circuit reversing a judgment entered in accordance with the verdict of a jury returned in the Southern District of New York in an action brought for an income tax refund.

On March 11, 1935, the Commissioner of Internal Revenue notified the taxpayer of the determination of a deficiency and penalty for the year 1932 (R. 18-9, 183-5). The deficiency was based on the disallowance of losses arising from the sale of securities to Innisfail Corporation and to the taxpayer's wife. The taxpayer paid the alleged deficiency and filed a claim for refund. Upon the Commissioner's failure to rule on the claim within six months, the taxpayer instituted this action. At the conclusion of the testi-

mony, both sides moved for a directed verdict and both motions were denied (R. 158-9). The jury found for the taxpayer on the issue of the sale to his wife and on the issue of the penalty but found for the Collector on the issue of the sale to Innisfail Corporation (R. 175-6). Judgment for the taxpayer was entered in the sum of \$28,935.49 (R. 17).

The taxpayer appealed to the Circuit Court of Appeals from that portion of the judgment which denied recovery for the loss asserted on the sale to Innisfail Corporation (R. 307-8). The Collector appealed from that portion of the judgment which granted recovery for the loss asserted on the sale to the taxpayer's wife but raised only the question of the proper cost basis of the stock sold. The Collector did not appeal from that portion of the judgment which granted the taxpayer recovery of the penalty (R. 338).

The appeal and cross-appeal by the taxpayer and the Collector from the adverse portions of the judgment were heard by the Circuit Court of Appeals in January, 1939. The court reversed the judgment of the District Court on both issues, holding that on the undisputed evidence the taxpayer was entitled to the loss on the sale to Innisfail Corporation and was not entitled to the cost basis he reported on the sale to his wife (R. 338-40). The Court of Appeals first ordered judgment to be entered in accordance with the opinion but, upon motion of the Collector, amended its opinion and ordered a new trial (R. 342-6).

The Collector petitioned this Court for a writ of certiorari on the ground that the Court of Appeals erred in holding the taxpayer entitled to the loss arising from the sale to Innisfail Corporation. The taxpayer cross-petitioned for certiorari on the ground that the Court of Appeals erred in remanding the case for a new trial instead of ordering the entry of judg-

ment. The taxpayer's petition also sought review of the Court of Appeals ruling on cost basis. The taxpayer's petition was denied on the same day that the Collector's petition was granted.

Facts.

Innisfail Corporation (hereinafter called "Innisfail") was organized under the laws of New Jersey in 1926 (R. 19, 185-90) and the taxpayer became the owner of all of its capital stock (R. 34). During the period of six years between its inception and the sale in question, Innisfail engaged actively in many business transactions. It put money out on "call" (R. 55). It made investments in mining, financial, and foreign ventures (R. 52-3). It joined and subscribed \$100,000 to a syndicate for the purpose of trading in Pathe stock and Government securities (R. 73-4, 229). It dealt in commodities (R. 48, 93). It sold thousands of dollars worth of securities in the open market (R. 119, 223-4, 229). It continues to this day to be a live business corporation. It has always been recognized by the Commissioner of Internal Revenue as a separate tax-paying entity (R. 172).

On December 29, 1932 the taxpayer sold and delivered a group of securities to Innisfail. Certificates for all of these securities were endorsed for transfer by the taxpayer to Innisfail (R. 20-4, 192-4). Requisite transfer stamps were attached in the amount of \$1732.72 (R. 139-41, 192-4). The stock was transferred on the books of each corporation from the taxpayer to Innisfail (R. 123-9, 276-81) and new certificates were issued to Innisfail (R. 77). All the

sales were made (at prevailing market prices (R. 30-2) for a total of \$60,923.80 (R. 26). The securities had cost the taxpayer a total of \$234,002.31 (R. 99-101), which entailed a loss of the difference.

The taxpayer maintained a running account with Innisfail (R. 78-99, 265-9, 271-5). Immediately before the sale he owed Innisfail \$68,364.69 (R. 26, 265-9) principally as the result of cash dividends which he had received from certain Chrysler and Hudson stock owned by Innisfail but registered in his name as nominee in accordance with common corporate practice (R. 34-7, 63, 78-85, 124, 265-9).¹ As the purchase price of the securities sold to Innisfail was \$7440.88 less than he owed Innisfail, the taxpayer gave Innisfail a check for that amount to balance the account (R. 26-7, 51-2, 98-9, 194, 265-9). The Board of Directors of Innisfail approved the acquisition of the securities by Innisfail from the taxpayer and the prices paid (R. 27).

Innisfail has received and kept all the dividends on the securities purchased from the taxpayer (R. 77, 122-3, 125-9). It was the taxpayer's unqualified intention to transfer title from himself to Innisfail and to retain no interest whatever in the securities (R. 24). It was at all times his purpose that Innisfail be an absolutely independent entity and that it stand on its own bottom (R. 41) as much as General Motors Corporation, of which the taxpayer was and is Vice President and General Counsel (R. 32). At the time Innisfail made the purchase

¹ The Board of Tax Appeals has recently sanctioned the treatment accorded these very dividends. *John Thomas Smith*, 40 B. T. A. 387. The taxpayer received the dividends in the first instance, credited them to Innisfail on the running account and periodically brought the account into balance (R. 265-9).

from the taxpayer, it had securities valued at \$791,751.92 and cash of \$17,115.03 (R. 227). The affairs of Innisfail and of the taxpayer were kept scrupulously separate. Innisfail has never reconveyed any securities purchased from the taxpayer (R. 24).

In December, 1934, the taxpayer sold all his Innisfail stock to his children (R. 29-30, 264). The running account between the taxpayer and Innisfail was, nevertheless, maintained until November, 1937, when the account was brought into final balance by a cash payment of \$99,000 from the taxpayer to Innisfail.

The taxpayer and Innisfail each kept a full set of books, consisting of a cash book, journal, ledger, check book and security record (R. 75-6). These books were periodically audited by Barrow, Wade, Guthrie & Co., certified public accountants (R. 67). They verified the taxpayer's indebtedness to Innisfail and the losses on the very sales by the taxpayer to Innisfail involved in this case (R. 134-5, 144, 293-8). They found all the books and records of both the taxpayer and Innisfail to be in standard form and made no reservations in their audit reports (R. 142-3).

Upon these undisputed facts,² the taxpayer built his motion for a directed verdict and upon them the Court of Appeals held that it was well founded.

² The Trial Judge charged the jury that "the evidence in this case is substantially undisputed, so that you are not confronted with the task of deciding what probably happened. What you will have to do is to take this evidence under careful consideration and decide what it proves" (R. 160).

Argument.

POINT I.

The taxpayer was entitled to deduct a loss on the sale to Innisfail.

1. This is a case of statutory construction. But before approaching the precise provision, we may note some parallel considerations which will ease the task of construction. As the Government admonishes, the statute must not be read with a sterile literalism that can only pervert its purposes. We, too, look to its fundamental design.

The recognition of a loss on the sale to Innisfail is not homage to empty formalism but adherence to a consistent pattern without which the law of taxation would be unintelligible. It is only one of the many consequences resulting from transactions between a corporation and its sole stockholder. Gain realized upon a sale by a corporation to its sole stockholder is taxable. *Burnet v. Commonwealth Improvement Co.*, 287 U. S. 415, 419. "The fact that it had only one stockholder seems of no legal significance." Assets received on the complete liquidation of a corporation constitute taxable income to the sole stockholder. *France Co. v. Commissioner*, 88 Fed. (2d) 917 (C. C. A. 6); *Cox v. Handy*, 24 Fed. Supp. 178 (D. Del.); *John K. Greenwood*, 1 B. T. A. 291. Losses sustained by a one-man corporation may not be reported in the individual income tax return of the sole stockholder. *Dalton v. Bowers*, 287 U. S. 404; *Menihan v. Commissioner*, 79 Fed. (2d) 304 (C. C. A. 2), cert. den. 296 U. S. 651. Periods during which a sole stockholder and a corporation successively hold property may not be combined to make up the two

years required for the creation of a capital asset. *Webber v. Knox*, 97 Fed. (2d) 291 (C. C. A. 8).

The record in this very case reveals a striking illustration of the tax consequences of a wholly owned corporation. Some years ago the taxpayer purchased a block of Hudson stock for \$158,000. In 1929 he sold the stock to Innisfail for \$106,400. In 1932 Innisfail sold the same stock in the open market for \$12,000. The taxpayer, of course, did not and could not report Innisfail's heavy loss in his 1932 income tax return (R. 119). A similar result occurred in the case of some Gimbel stock where again Innisfail's loss was not available to the taxpayer (R. 47, 296). These instances not only bring out in bold relief the statutory significance of a wholly owned corporation but also demonstrate the scrupulous fidelity with which the taxpayer respected the separate character of Innisfail.³

Thus it is that the entity of a wholly owned corporation has real meaning and that it does not always redound to the sole stockholder's benefit. With characteristic felicity, Mr. Justice Holmes cleared the subject of misguided generalization:⁴

... * * But it leads nowhere to call a corporation a fiction. If it is a fiction it is a fiction created by law with intent that it should be acted on as if true. The corporation is a person and its ownership is a nonconductor that makes it impossible to attribute an interest in its property to its members."

³ The statement on page 21 of the Government's brief that the taxpayer "ignored the corporate entity in substantially every transaction he had with it" might have been regarded by Ruskin as "pathetic fallacy".

⁴ *Klein v. Board of Supervisors*, 282 U. S. 19, 24.

Against this background, the allowance of loss on a sale to a controlled corporation looms up as an integral part of the statutory scheme and we find that the courts have uniformly allowed such loss under circumstances indistinguishable from those in the case at bar. Four Courts of Appeals have held the loss deductible. *Jones v. Helvering*, 71 Fed. (2d) 214 (App. D. C.), cert. den. 293 U. S. 583; *Commissioner v. Eldridge*, 79 Fed. (2d) 629 (C. C. A. 9); *Commissioner v. McCreery*, 83 Fed. (2d) 817 (C. C. A. 9); *Commissioner v. Johnson*, 104 Fed. (2d) 140 (C. C. A. 8); *Foster v. Commissioner*, 96 Fed. (2d) 130 (C. C. A. 2), decided almost a year before that court decided the case at bar.⁵

The law seemed so well settled that the Solicitor General of the United States in 1935 refused to apply for certiorari in the *Eldridge* case, *supra*, even though the Treasury Department recommended it.⁶ And, in *Gregory v. Helvering*, 293 U. S. 465, 469, the decision so heavily relied upon by the Government, this Court gave explicit endorsement to the *Jones* case, *supra*, when it declared:

“* * * The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted. * * * *Jones v. Helvering*, 63 App. D. C. 204, 71 F. (2d) 214, 217.”

⁵ The Board of Tax Appeals has consistently reached the same conclusion. *David Stewart*, 17 B. T. A. 604; *Corrado & Galiardi, Inc.*, 22 B. T. A. 847; *Edward Securities Corporation*, 30 B. T. A. 918; *Ralph Hochstetter*, 31 B. T. A. 791; *Jahn Thomas Smith*, *supra*, 40 B. T. A. 387, involving prior years of the instant taxpayer.

⁶ Hearings before Joint Committee on Tax Evasion and Avoidance, 1937, p. 206.

2. The Government, by invoking the doctrine of *Gregory v. Helvering, supra*, would deny the taxpayer the right to report the loss because of the alleged absence of "business purpose" in the sale. The *Gregory* case limited the scope of the reorganization provisions to transactions having a "business purpose", i. e., those involving the readjustment of a business enterprise.⁸ But certainly this Court did not intend to make that the *sine qua non* for the determination of losses, especially since the *Gregory* opinion, as we have just seen, specifically approved *Jones v. Helvering, supra*, where there was no "business purpose". Even without so plain an expression in the *Gregory* opinion, it would have been apparent that this Court had no such intention, for the statute itself sets up the two occasions on which losses may be reported. Only one of these requires the element of business. Section 23(e) of the Act provides that there shall be allowed as deductions losses sustained during the taxable year:

(1) if incurred in trade or business; or

7 In the Circuit Court of Appeals, however, the Government failed to urge this argument, specifically renounced any quarrel with the inviolability of *Junisfail* as a separate corporate entity and confined itself to the question of whether there was any sale at all, the argument made in Point II of its brief herein. (See footnote 11.) Under these circumstances, the Government cannot be heard to urge anything but Point II as ground for reversing the Circuit Court of Appeals. *Helvering v. Minnesota Tea Co.*, 296 U. S. 378; *Helvering v. Tex-Penn Oil Co.*, 300 U. S. 481.

8 See Regulations 86, Art. 112(g)-1, adopted immediately following the *Gregory* decision. In *Electrical Securities Corp. v. Commissioner*, 93 Fed. (2d) 593 (C. C. A. 2), Judge L. Hand, who wrote the *Gregory* opinion in the Circuit Court of Appeals, said that the *Gregory* case restricted the reorganization provisions to corporations engaged in financial, commercial or industrial business enterprises, because the reorganization provisions were meant to allow businesses to be reconstructed.

"(2) if incurred in any transaction entered into for profit, though not connected with the trade or business . . ."

The Government's contention frustrates the intent of Congress by abrogating subdivision (2) and requiring every loss to be in connection with a business under subdivision (1).

The loss involved in the case at bar was incurred in a "transaction entered into for profit" under subdivision (2). The word "transaction" in subdivision (2) embraces the whole sequence of events leading up to the sale, especially the *acquisition* of the property. The expectation of profit at that time suffices for claiming the subsequent loss. *Terry v. United States*, 10 Fed. Supp. 183 (D. Conn.); *Hartford-Connecticut Trust Co. v. United States*, 10 Fed. Supp. 179 (D. Conn.); *W. W. Hale*, 32 B. T. A. 356, aff'd (without reference to this point) 85 Fed. (2d) 819 (App. D. C.); *Wadsworth R. Lewis*, 34 B. T. A. 996; *August Heckscher*, 36 B. T. A. 1181; Paul, *Studies in Federal Taxation*, 2d Series, page 281; cf. *Heiner v. Tindle*, 276 U. S. 582. Otherwise one who sold property in the open market for the purpose of establishing a tax loss would be outside the requirement that the transaction be "entered into for profit". Indeed, if the *sale* were the "transaction" that had to be "entered into for profit", all losses would be rejected and subdivision (2) would be a nullity; because any sale, at a price lower than cost, is obviously never "entered into for profit".

3. We have shown that it is sufficient that the loss be sustained in a transaction entered into for profit and we have shown that the requirement of "business purpose" established by the *Gregory* case is inapplicable to the case at bar. But even if there

were some requirement that the sale must be charged with "business purpose"; we would be prepared to show that this sale was so charged.

Just prior to the sale the taxpayer owed Innisfail approximately \$67,000. One of the purposes of the transaction was to eliminate this indebtedness (R. 63). The market value of the securities sold by the taxpayer to Innisfail was about \$60,000 and the taxpayer gave Innisfail a check for the remaining \$7,000 to balance the account. It had for many years been the business practice of the taxpayer to bring his account with Innisfail into balance at periodic intervals and that practice continued long after any possible tax motives could be attributed to him. Again, the very payment of the \$7,000 cash amount shows the business reality of the transaction for if the taxpayer had been engaged in a subterfuge he could have transferred securities for as much or more than the amount of the indebtedness. In the same year the taxpayer sold approximately one-half million dollars worth of Chrysler stock in the open market, sustaining about a quarter of a million dollar loss (R. 415). If Innisfail were a mere sham, the taxpayer would, as he could, have sold this stock to Innisfail. But he did not do that. He sold Innisfail only what Innisfail was in a financial position to handle. Innisfail bought only so much as there was business reason for it to buy in receiving payment on the taxpayer's debt to it.

The Government's brief states on page 19 that "The Revenue Act contemplates genuine losses, recognized as such by the business world." What could better satisfy this test than the recognition of the losses by the certified public accounting firm of Barrow, Wade & Guthrie (R. 135, 293)?

Innisfail itself had a live and legitimate business purpose. One of the two reasons why the taxpayer organized Innisfail was because he "wanted a business corporation" (R. 35). During the period of six years between its inception and the date of the transaction in question, Innisfail engaged actively in many business transactions. It put money out on "call" (R. 55). It made investments in mining, financial and foreign ventures (R. 52-3). It joined and subscribed \$100,000 to a syndicate for the purpose of trading in Pathe stock and Government securities (R. 73-4, 229). It dealt in commodities (R. 48-93). It sold thousands of dollars worth of securities in the open market (R. 119, 223-4, 229). It continues to this day to be an active business corporation. Whatever "business purpose" may mean it can hardly exclude the foregoing activities, the very stuff of which business is made.

4. We have seen that the requirement of "business purpose" may not be imported from the *Gregory* case to the statutory loss provision and that in any event it would be satisfied by the facts of the case at bar. We have also seen that the sale by the taxpayer to Innisfail was "a transaction entered into for profit" within the meaning of the loss provision. Only one Government contention remains—that, because of the relationship of seller and buyer, the sale was not a "closed", "identifiable" event. This contention is disposed of by *Burnet v. Commonwealth Improvement Co.*, *supra*, 287 U. S. 415, a definitive authority for the taxpayer not only on the issue of "closed transaction" but of "business purpose" as well. In that case, the trustees of the Widener Estate owned all the stock of a corporation and "completely

dominated" it. Widener had formed the corporation during his lifetime to avoid multifold inheritance taxes. It was regarded as an "informal" corporation. The clerks and bookkeepers of the estate and the office expenses of the estate were paid by the corporation. A running account was maintained between the corporation and the trustees. Transfers were effected from the corporation to the trustees as well as vice versa and were recorded by book entries. In 1920 the corporation sold securities to the trustees in consideration for the cancellation of an indebtedness which it owed the trustees. This Court held the sale to be a taxable transaction.

The case bears an astonishing resemblance to the case at bar. The motive actuating the creation of the corporation was the same as a motive in the case at bar. The corporation was described by its owners as "informal", the same as in the case at bar.⁹ The consideration for the sale was cancellation of an indebtedness, the same as in the case at bar. All relevant elements—background, stockholder-corporation relationship, sale, transfer, consideration, intent—were identical. The role of "business purpose" was the same as in the case at bar, for the securities were transferred from corporation to stockholder in consideration for the cancellation of an indebtedness. Can the difference be that the sale in the case at bar was to take a loss and, therefore, lacked "business purpose" while the sale in the *Burnet* case was to realize a gain and, therefore, had a "business purpose"? The answer is "No", for the sale in the *Burnet* case was also to take a loss. What happened was that the corporation reported a loss, the Commissioner,

⁹ The Government attaches great importance to the fact that the taxpayer regarded Innisfail as an "informal" corporation and refers to this fact no less than three times in its brief.

upon audit, found the cost to be lower than reported in the return and the loss turned into a gain. But the intent at the time of the sale was the same as the intent in the case at bar; both taxpayers sold with the expectation of loss.

The way is now clear to see the impact of the *Burnet* case on the Government's contention that the sale to Innisfail was not such a "final" disposition as to entitle the taxpayer to a loss. The Government says a deductible loss must be realized "by some closed event * * * and a sale may constitute such closed event only when there is a final disposition of the property in question". The *Burnet* case is a controlling authority to the effect that the sale to Innisfail meets this test. The *Burnet* case involved a sale resulting in gain, but solely a redetermination of cost after the sale cannot alter the complexion of the sale. The sale, when made, is either a "closed", "identifiable" event or it is not. If it is, realization of loss as well as gain flows from it. If it is not, realization of neither gain nor loss results. A decision that the transaction was the kind of a transaction upon which gain is to be predicated necessarily compels a decision that it was the kind of a transaction upon which loss must be predicated. Indeed the requirement for a "closed", "identifiable" event may well be stricter in the case of gain than in the case of loss, because a constitutional question lurks in the case of gain. *Eisner v. Macomber*, 252 U. S. 189; *Weiss v. Stearn*, 265 U. S. 242.

The Government challenges the finality of the sale because the taxpayer as sole stockholder of Innisfail had the power to effect a reconveyance of the securities. The same objection would, of course, apply to a case of gain and is disposed of by the *Burnet* case. But there is another answer to the Government's con-

tion. The taxpayer could have retaken the securities from Innisfail only in a taxable transaction, for the reconveyance could be only by way of a dividend or upon liquidation of Innisfail. In either case, a sizeable tax would have been incurred.¹⁰ Far from prejudicing the public revenue by any such maneuver, the taxpayer would have incurred substantial additional tax thereby. And, of course, it is wholly unrealistic to try to make capital out of the taxpayer's power to repurchase the securities from Innisfail; if such power were the test, no sale of listed securities would ever be final for there is always power to repurchase such securities.

The Government seeks to explain the *Burnet* case by recourse to the dogma that the corporate entity will never be disregarded in favor of the corporation. But the dogma itself is false. This Court has disregarded the corporate fiction in favor of a corporation. *Southern Pacific v. Lowe*, 247 U. S. 330; *Gulf Oil v. Lewellyn*, 248 U. S. 371. These two cases were considered by this Court in the *Burnet* case but this Court said that the sale in the *Burnet* case gave rise to taxable gain because of "the actual transfer of securities and the payment of a debt", while the *Southern Pacific* and *Gulf Oil* cases involved "mere bookkeeping or paper transactions". The question thus turns on the reality of the sale not the personality of the party who seeks to have the corporate entity disregarded. As the sale in the case at bar involved facts identical with the sale in the *Burnet* case, the same result must follow.

¹⁰ The Innisfail stock in the hands of the taxpayer had a very low cost basis as shown by the difference between that cost and the market value of the stock when the taxpayer disposed of it to his children in 1934 and paid a substantial gift tax upon the transaction (R. 29-30, 264).

Moreover, whatever else may be open for the Government to argue, it may not urge this Court to disregard the corporate entity, because in the plainest words the Government in the court below conceded that the corporate entity could not be disregarded in the case at bar.¹¹ Nor did the Government's petition for certiorari ask this Court to disregard the corporate entity. Yet the Government attempts to distinguish the *Burnet* case on the ground that the corporate entity will not be disregarded in favor of the corporation, thus implying that it should be disregarded in the case at bar.

5. This is, to repeat, a case of statutory construction. The legislative history of all the Revenue Acts and an analysis of the provisions of the Revenue Act of 1932 compel the conclusion that the taxpayer was entitled to a deduction for the loss on the sale to Innisfail. We could have opened and closed on this single note. However, in view of the Government's polemics, it seemed desirable to clear the atmosphere for a dispassionate appraisal of the statutory provisions. Section 24(a) (6) of the Revenue Act of

¹¹ The Government's brief in the Circuit Court of Appeals stated:

"*Jones v. Helvering*, 71 F. (2d) 214, *Commissioner v. Eldridge* 79 F. (2d) 629, *Commissioner v. McCreery*, 83 F. (2d) 817 and *Foster v. Commissioner* 96 F. (2d) 130 are cited in plaintiff's brief in support of his contention that losses resulting from sales by a taxpayer wholly owned or controlled corporations are deductible because of the inviolability of the corporation as a separate entity.

"Neither the Court below nor the Government is in disagreement with that contention. That represents a principle of law which may be applied to a situation where, as a matter of fact *there was a sale*". (Italics Government's.)

1934, c. 277, 48 Stat. 680, was enacted for the very purpose of precluding losses on sales to closely related persons.¹² In view of the occasional difficulty of sifting real from sham sales in such instances, Congress wisely eliminated these deductions altogether. The enactment of this amendment is convincing proof that theretofore such losses were allowable and that the sole test was whether the loss was real rather than feigned. *Foster v. Commissioner*, *supra*, 96 Fed. (2d) 130. The committee reports in both the Senate and House show that the statute was passed for the express purpose of abolishing these losses, which Congress believed allowable under preexisting law.¹³ And the proceedings of the Joint Committee on Tax Evasion and Avoidance in June, 1937, demonstrate a clear understanding by members of Congress and ex-

¹² See Appendix, page 34, for full text of section.

¹³ The Report of the Committee on Ways and Means of the House of Representatives states at page 23, referring to Section 24(a) (6):

"The bill adds to existing law a paragraph which will deny losses to be taken in the case of sales or exchanges of property between members of a family, or between a shareholder and a corporation in which such shareholder holds a majority of the voting stock. . . .

"Experience shows that the practice of creating losses through transactions between members of a family and close corporations has been frequently utilized for avoiding the income tax. It is believed that the proposed change will operate to close this loophole of tax avoidance." (House Rep. No. 704, 73d Congress, 2d Session. Italics supplied.)

The Reports of the Finance Committee of the Senate and of the subcommittee of the House Ways and Means Committee are to the same effect. (Senate Report No. 558, 73d Congress, 2d Session, p. 27; Hearings before Committee on Ways and Means, Revenue Revision 1934, p. 134.) See also remarks of Senator Harrison, Chairman of Senate Finance Committee, 78 Congressional Record, page 5847. Cf. Report on Stock Exchange Practices, Senate Committee on Banking and Currency. (Senate Report No. 1455, 73d Congress, 2d Session, pp. 321-327.)

perts of the Treasury Department that the effect of the statute on this precise situation was to deny a loss that was, until 1934, indisputable.¹⁴

If there were any doubt that as a matter of statutory construction a loss such as that involved in this case was allowable prior to the 1934 amendment, that doubt would be resolved by Sec. 112(b) (5) of the Revenue Act of 1932 dealing with "transfer to corporation controlled by transferor".¹⁵ This section provided that no gain or loss should be recognized if property were transferred to a corporation solely in exchange for stock in such corporation and immediately after the exchange the transferor were in control of the corporation. If the Government were right in its contention that there is no realization of loss in a transfer by a sole stockholder to his wholly owned corporation, there would have been no need for this provision precluding loss where a taxpayer transferred property to a corporation in ex-

¹⁴ Hearings before Joint Committee on Tax Evasion and Avoidance, 1937, page 207 (referring to *Commissioner v. Eldridge*, 79 F. (2d) 629, *supra*, p. 9).

"Mr. Kent: . . . I should have stated, as I intended to do, that so far as the particular situation presented in this recent case is concerned, it had been taken care of by the Congress in the amendment contained in Section 24-A (6), Revenue Acts of 1934 and 1936, which denied to an individual a deduction for losses on shares sold or exchanged by him with a corporation in which he holds directly or indirectly the controlling interest.

"Mr. Cooper: . . . While this decision arose under prior acts, it could not arise under existing law.

"Mr. Vinson: Of course, that decision was on the old statute."

"Mr. Kent: That is true, that was under the law as it existed prior to 1934."

¹⁵ See Appendix, page 31.

change for all the capital stock of the corporation.¹⁶ The very presence of Section 112(b) (5) in the Revenue Act of 1932 is, therefore, additional proof that Congress permitted losses on sales to controlled corporations until Congress proclaimed in 1934 that it would no longer permit such losses. The Government's contention is in effect an attempt to extend Section 112(b) (5) to the facts of the case at bar, a situation which it can under no reasonable construction be made to cover:

The law is now clear that, for the period since 1934, deductions are not allowed for losses incurred on sales to controlled corporations. It is equally clear that such deductions were uniformly allowed for the period prior to 1934. There is no occasion at this late date to upset the established law for a period ended six years ago. And it would be unfortunate if this Court should reverse itself in what is probably the last case to be presented here on this question.

POINT II.

The taxpayer was entitled to a directed verdict.

We now address ourselves to the Government's somewhat half-hearted argument, though its only argument below, that the verdict must stand because there was a question of fact for the jury as to whether there was a sale at all. This is Point II of the Government's brief. We shall show that the Circuit Court of Appeals was right in holding that the Trial

¹⁶ In its argument before the Circuit Court of Appeals in *Commissioner v. Johnson*, No. 317, this term, to be heard immediately after the case at bar, the Government sought to invoke Section 112(b) (5) as a bar to the taxpayer's loss. The argument was rejected because it had not been urged in the Board of Tax Appeals.

Court had erred in denying the taxpayer's motion for a directed verdict.

The facts were undisputed. Indeed, as we have seen, the trial judge charged the jury that "the evidence in this case is substantially undisputed, so that you are not confronted with the task of deciding what probably happened. What you will have to do is to take this evidence under careful consideration and decide what it proves" (R. 160). The Circuit Court of Appeals concluded (R. 339-40): "Thus it was proved that the securities here involved were actually sold to Imisfail and the legal title to them has ever since been in the purchaser As the evidence was undisputed and proved an actual sale of these securities which permanently divested the plaintiff of title to them, his motion for a directed verdict on this cause of action should have been granted." The only issue was one of law as to whether the facts entitled the taxpayer to a deductible loss and, on this issue, our argument in Point I shows that there could be but one proper answer. Even if there were a mixed question of law and fact, the ultimate decision would be for the court. *Helvering v. Tex-Penn Oil Co.*, 300 U. S. 481, 491; *Helvering v. Rankin*, 295 U. S. 123, 131; *Bogardus v. Commissioner*, 302 U. S. 34, 39.

In *Jones v. Helvering*, *supra*, 71 Fed. (2d) 214, 216, cert. den. 293 U. S. 583, the court reversed the Board, which had denied a loss on the sale to a controlled corporation. The court said:

"* * * when * * * the evidence is uncontradicted and unimpeached, we think we are bound, without regard to the Board's finding, to give it effect."

Conversely, in *Commissioner v. Dyer*, 74 Fed. (2d) 685 (C. C. A. 2), cert. den. 296 U. S. 586, involving a similar situation, the Board held for the taxpayer and the Court of Appeals reversed, holding that as a matter of law the taxpayer had not sustained a loss.¹⁷ In *Griffiths v. Commissioner*, No. 49, and *Commissioner v. Johnson*, No. 317, to be heard, respectively, immediately before and immediately after the instant case, the Board upheld sales to controlled corporations and the Government now asks this Court to upset the Board's conclusions because a question of law alone is involved. The Government's attempt to rely on the finality of the jury verdict in the case at bar is, of course, irreconcilable with its attack on the Board's decisions in the *Griffiths* and *Johnson* cases. Surely the general verdict of a jury is entitled to no more weight than the considered conclusion of an expert quasi-judicial body.

Denial of the taxpayer's motion for a directed verdict cannot be justified on the ground that some of the evidence came from interested witnesses. *Chesapeake & Ohio Railway Co. v. Martin*, 283 U. S. 209; *Hull v. Littauer*, 162 N. Y. 569, 572. In the former case, this Court set out the following statement as the correct rule:

¹⁷Courts of Appeals are constantly reversing judgments involving the deductibility of losses on sales. *Budd v. Commissioner*, 43 Fed. (2d) 509 (C. C. A. 3); *American Auto Trimming Co. v. Lucas*, 37 Fed. (2d) 801 (App. D. C.); *Marston v. Commissioner*, 75 Fed. (2d) 936 (C. C. A. 2); *Marston v. Commissioner*, 75 Fed. (2d) 938 (C. C. A. 2); *Commissioner v. Riggs*, 75 Fed. (2d) 1004 (C. C. A. 3), cert. den. 296 U. S. 637; *Commissioner v. Troup*, 75 Fed. (2d) 1010 (C. C. A. 7), cert. den. 296 U. S. 586; *Rasmussen v. Eddy's Steam Bakery, Inc.*, 57 Fed. (2d) 27 (C. C. A. 9); *St. Louis Union Trust Co. v. United States*, 82 Fed. (2d) 61 (C. C. A. 8); *Madeira v. Commissioner*, 98 Fed. (2d) 556 (C. C. A. 3).

"* * * It is not proper to submit uncontradicted testimony to a jury for the sole purpose of giving the jury an opportunity to nullify it by discrediting the witness, when nothing more than mere interest in the case exists upon which to discredit such witness."

Moreover, the testimony of the taxpayer, who was the only *interested* witness, was amply corroborated at every vital point by the other witnesses and by the documentary evidence. The intent to transfer title was supported by written assignments of the stock certificates and by the transfer records of the corporations whose stocks were sold. The payment of full consideration was attested by checks, bank records and a complete set of books kept by the taxpayer and Innisfail in the ordinary course of business. Documented proof corroborated every oral assertion. The Government called only one witness, whose testimony was unrelated to any issue now before this Court and is nowhere referred to in the Government's brief.

POINT III.

If not entitled to a directed verdict, the taxpayer would be entitled to a new trial because of errors by the trial court.

We have argued that the taxpayer was entitled to a directed verdict and that the Circuit Court of Appeals was right in reversing the judgment because the case should never have been submitted to the jury. We have shown that the evidence was undisputed and that on the facts, as established, the taxpayer was entitled to recover as a matter of law. But even if the taxpayer were not entitled to a directed verdict and even if the case should have been submitted to

the jury, the verdict could not stand; a new trial would be necessary because of errors in the charge and in the admission of evidence. Many such errors were pointed out and pressed by the taxpayer in the Circuit Court of Appeals, but we shall here present only two because we believe each of them alone to be decisive.¹⁸

1. The trial judge instructed the jury that book entries are not evidence of the transactions which they record.¹⁹ This instruction is in direct contravention of the Act of June 20, 1936, c. 640, §1, 49 Stat. 1561, which provides that:

... * * any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of said act, transaction, occurrence, or event, if it shall appear that it was made in the regular course of any business and that it was the regular

¹⁸ The respondent may always defend a judgment on any ground consistent with the record, even if rejected in the lower court. *Interstate Commerce Commission v. Illinois Central R. R.*, 215 U. S. 452; *Frey & Son, Inc. v. Cudahy Packing Co.*, 256 U. S. 208; *United States v. American Railway Express Co.*, 265 U. S. 425; *Heleering v. Gowran*, 302 U. S. 238, 51 Harvard Law Rev. 1058, 1059-60. The grounds urged by the taxpayer for a new trial were not rejected by the Circuit Court of Appeals but found unnecessary to the disposition of the case.

¹⁹ The Court: I think the jury understand. It is ~~no~~ evidence of the transactions; it is evidence that the plaintiff kept a record and this is the record. The fact that he kept a record is not proof in and of itself that he did certain things. He might have kept a record in which he discovered the North Pole, but that would not prove that he did it.

Mr. Sher: If your Honor please, I most respectfully except to that part of it. I think that books of account are certainly some evidence of the transactions which they describe.

course of such business-to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter * * *²⁰ (Italics supplied.)

Even before the adoption of the above statute it was clear that records like those here involved constitute evidence. *Wessel v. United States*, 49 Fed. (2d) 137 (C. C. A. 8).

The consideration given by Innisfail for the stock which it bought from the taxpayer was extinguishment of an indebtedness due it from the taxpayer. It was, therefore, necessary to prove the existence of this indebtedness in order to prove the consideration for the sale. Such proof was adduced by introducing the books and records of both Innisfail and the taxpayer, as well as supporting documents such as checks, bills, and memoranda of sale (R. 79-99, 265, 271-6). The sweeping direction given the jury that it need not consider the books as *any* evidence of the transactions was a flagrant error resulting in grave prejudice to the taxpayer.

2. The trial court admitted a large mass of remote and prejudicial evidence over the vigorous objection

"The Court: This is not strictly a book of account. I guess you understand that.

"Mr. Sher: It is a transcript from the ledger, your Honor, and as long as there is no objection to its authenticity, then it is the ledger which we are offering, and that certainly is evidence of a transaction.

"The Court: You just except to any instructions to the jury that you do not approve of and that will preserve your client's rights, and we will pass on."

Although the trial judge said that he was admitting the entries as "a competent part of the plaintiff's proof", it is nevertheless clear from the above colloquy that he was admitting them only as "evidence that the plaintiff kept a record" and not evidence at all that the plaintiff "did certain things" (R. 69-70).

²⁰ See Appendix, pages 34-5, for full text of statute.

of the taxpayer. Although the action concerned only the tax year 1932, the trial court permitted the Government to show that the taxpayer reported large capital losses in 1929 and in 1931 (R. 63-4, 110-13). The Government was also permitted to show that the taxpayer conveyed a block of Chrysler preferred stock to Innisfail in 1926, that Innisfail subsequently exchanged this stock for Chrysler common stock and that the taxpayer would have paid a much larger tax than Innisfail paid if he himself had made the exchange (R. 103-7). During the years 1926 to 1932 a considerable amount of stock owned by Innisfail was registered in the name of the taxpayer as nominee. The taxpayer received the dividends on this stock and credited them to Innisfail on the running account maintained between the two (R. 265-9). The running account was regularly brought into balance so that the taxpayer paid over the dividends to Innisfail. The Government was allowed to ask the taxpayer's secretary on cross-examination how much more income tax, year by year, the taxpayer would have had to pay on these dividends if he had received them on his own account instead of for the account of Innisfail (R. 107-14).

It is abundantly clear that the purpose behind the introduction of this evidence was to convey to the jury the impression that over a period of many years prior to the year in question the taxpayer had assiduously pursued a course of tax minimization. The district attorney revealed his purpose with commendable candor when he said: "We are attempting (to show) he had the thought at all times in mind as to the reduction of his income tax liability" (R. 71). This clearly prejudicial evidence had no legitimate bearing on the case. Authority hardly need be cited

for the proposition that a taxpayer's purpose to minimize taxes is unexceptionable. The evidence was ~~not~~ therefore calculated to show any relevant intent or design.²¹

The obvious purpose of the evidence about these earlier events was to inflame the minds of the jurors against the taxpayer, to brand him with the stigma of tax avoidance, and to deny him an impartial consideration of his case by the jury. That it achieved its purpose only too well is demonstrated by the verdict against the taxpayer on the sale to Innisfail.

POINT IV.

If this Court holds that the taxpayer was entitled to a directed verdict, this Court should order the entry of judgment rather than a new trial.

If this Court holds that the taxpayer was entitled to a directed verdict, then this Court should not merely affirm the decision of the Circuit Court of Appeals but should direct the District Court to enter judgment in favor of the taxpayer. The Circuit Court of Appeals itself first made this disposition but, upon the Government's motion for rehearing, withdrew its order for the direction of judgment and substituted an order for a new trial. The taxpayer filed a cross-petition for certiorari from this phase of the Circuit Court of

²¹ Nor was the testimony admissible on any theory of "similar" transactions, for the testimony was not similar to any transaction at issue in the trial. There was no contention that in 1932 the taxpayer should have returned as income any dividends paid on stock held by Innisfail. The only question was whether he was entitled to a loss on the sale to Innisfail. It is well settled that other transactions cannot be shown unless they are "identical". *Johnstown Tribune Publishing Co. v. Briggs*, 76 Fed. (2d) 601 (C. C. A. 3); *Norman v. United States*, 289 Fed. 712 (C. C. A. 4); *People v. Harvey*, 235 N. Y. 282.

Appeals decision. The cross-petition was denied but we assume that it was denied because it was unnecessary, *Gompers v. United States*, 233 U. S. 604, 607, since this Court upon deciding the case presented by the Government's petition must mould the judgment to be entered below.²²

The only impediment to an order directing the entry of judgment is the case of *Slocum v. N. Y. Life Insurance Co.*, 228 U. S. 364, holding that the Seventh Amendment requires a new trial. But the instant action was brought against a Collector of Internal Revenue for the refund of taxes, and such an action, although nominally against the Collector, is "to all intents and purposes . . . an action against the Government for monies in the 'treasury' ". *Auffmordt v. Hedden*, 137 U. S. 316, 329; *Moore Ice Cream Co. v. Rose*, 289 U. S. 373, 382-3. The Seventh Amendment does not apply to such suits. *Wickwire v. Reinecke*, 275 U. S. 101, 104-5; *Murray's Lessee, et al. v. Hob-*

²² Although the general rule is that the respondent may not challenge the judgment below, there is a well established exception where the respondent's attack involves matter closely related to the subject of the appellant's attack. *United Railways & Electric Co. v. West*, 280 U. S. 234, 253; *Lucas v. Alexander*, 279 U. S. 573, 576; see also *Gompers v. United States*, 233 U. S. 604, *supra*. The case at bar is comfortably within the exception, because the order for a new trial made by the appellate court is regarded as "a part of its judgment of reversal". It is this judgment which is here for review on certiorari. *Haseltine v. Central Bank of Springfield*, 183 U. S. 130, 131; *Smith v. Adams*, 130 U. S. 167, 177.

Moreover the general rule has been severely criticized as an obstacle to complete justice. See an interesting note in 51 *Harvard Law Rev.* 1058, *supra*.

Of course, if this Court affirms because of our argument in Point II that there were errors at the trial in the admission of evidence and instructions to the jury, then the case must be sent back for a new trial.

ken Land & Improvement Co., 18 How. 272; *Edwin Cigar Co. v. Higgins*, 17 Fed. Supp. 988, 991. The Bill of Rights was intended only to afford protection against the federal government. The *Slocum* rule is incongruous with the case at bar.

Moreover, this Court should overrule the *Slocum* case and establish the doctrine that an appellate court, upon reversing the trial court for error in denying a motion for a directed verdict, should order the entry of judgment. When the decision in the *Slocum* case was announced about twenty-five years ago, lawyers and scholars alike were dismayed. Four Justices joined in an exhaustive dissenting opinion denying the constitutional necessity for the decision and deploring the unfortunate practical consequences with which it was pregnant. Confirmation of the warning sounded by the dissent was not slow to follow. The multiplication of new trials, born of the *Slocum* case, was immediately decried as "one of the greatest abuses in the administration of justice."²³ More recently, an outstanding authority on federal procedure laconically characterized its effect as "this waste."²⁴ An even graver objection had been pointed out by Ezra Ripley Thayer. "The result," he lamented, "is worse than waste because of the sharp temptation which the new trial offers the prevailing party to make his evidence meet the demands of the law as now laid down."²⁵

Lack of adequate judicial statistics prevents an

²³ Petition for rehearing in *Slocum* case filed by Everett P. Wheeler in behalf of the American Bar Association and subscribed by Roscoe Pound, Joseph H. Choate and others.

²⁴ Charles E. Clark, A New Federal Civil Procedure, I, The Background, 44 Yale Law Journal, 387, 408.

²⁵ Thayer, Judicial Administration, 63 U. of Pa. L. R. 585, 600.

exact toll of the damage wrought.²⁶ It was so serious however, that remedy by constitutional amendment was suggested as a pressing necessity.²⁷

An ingenious attempt to avoid the unfortunate results of the *Slocum* decision has been made in Rule 50(b) of the new Federal Rules of Civil Procedure, but the path is tortuous and the ground tenuous. Until the *Slocum* case is formally repudiated by this Court, certain plausible attacks on the Rule must be expected.²⁸ It would therefore be healthy to remove the anachronistic *Slocum* doctrine altogether, for so long as it stands, courts may, as the court below did, fall under the influence of its illusory authority.

The new rules testify to the desirability of entering judgment under the circumstances of the case at bar. Why should not this Court say so, instead of professing adherence to the *Slocum* case while countenancing a tunnel under it?

²⁶ Its wide potential application is indicated, however, by the facts (1) that in the year ending June 30, 1938, there were reversals in 31.2% of the cases heard and decided by the Circuit Courts of Appeals and the Court of Appeals of the District of Columbia, 1938 Annual Report of the U. S. Attorney General, pages 216-217; (2) that in the year covered by the American Law Institute's Study of the Federal Courts, a new trial was granted in 18.5% of all cases prior to final disposition. Study of the Business of the Federal Courts (1934), page 98.

²⁷ Superfluous New Trials and the Seventh Amendment, Editorial, 26 Green Bag 106-7.

²⁸ Ohlinger, Federal Practice (1938), Vol. 3, page 635.

CONCLUSION.

The decision of the Court below should be affirmed and the case remanded to the District Court with a direction to enter judgment for the taxpayer.

Respectfully submitted,

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New York, New York, November 13, 1939.

APPENDIX.

Revenue Act of 1932, c. 209, 47 Stat. 169:

Sec. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

(e) *Losses by individuals.*—Subject to the limitations provided in subsection (r) of this section, in the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

(1) if incurred in trade or business; or

(2) if incurred in any transaction entered into for profit, though not connected with the trade or business; * * *

Sec. 112. RECOGNITION OF GAIN OR LOSS.

(a) *General Rule.*—Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 111, shall be recognized, except as hereinafter provided in this section.

(b) * * *

(5) *Transfer to corporation controlled by transferor.*—No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in

such corporation, and immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two or more persons this paragraph shall apply only if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange.

Revenue Act of 1934, c. 277, 48 Stat. 680:

Sec. 24. ITEMS NOT DEDUCTIBLE.

(a) *General Rule.*—In computing net income no deduction shall in any case be allowed in respect of—

(6) Loss from sales or exchanges of property, directly or indirectly, (A) between members of a family, or (B) except in the case of distributions in liquidation, between an individual and a corporation in which such individual owns, directly or indirectly, more than 50 per centum in value of the outstanding stock. For the purpose of this paragraph—(C) an individual shall be considered as owning the stock owned, directly or indirectly, by his family; and (D) the family of an individual shall include only his brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

Act of June 20, 1936, c. 640, § 1, 49 Stat. 1561:

In any court of the United States and in any court established by Act of Congress, any writing or record, whether in the form of an entry in a book or

otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of said act, transaction, occurrence, or event, if it shall appear that it was made in the regular course of any business, and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but they shall not affect its admissibility. The term "business" shall include business, profession, occupation, and calling of every kind.

SUPREME COURT OF THE UNITED STATES

No. 146.—OCTOBER TERM, 1939.

Joseph T. Higgins, Collector of Internal Revenue for the Third District of New York, Petitioner,

vs.

John Thomas Smith.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[January 8, 1940.]

Mr. Justice REED delivered the opinion of the Court.

Certiorari was allowed¹ from the judgment of the Circuit Court of Appeals for the Second Circuit² on account of an asserted conflict between the decision below and that of the Circuit Court of Appeals for the Seventh Circuit in *Commissioner v. Griffiths*.³

The issue considered here is whether a taxpayer under the circumstances of this case is entitled to deduct a loss arising from the sale of securities to a corporation wholly owned by the taxpayer. The statute involved is Section 23(g) of the Revenue Act of 1932.⁴

The Innisfail Corporation was wholly owned by the taxpayer, Mr. Smith. It was organized in 1926 under the laws of New Jersey. The officers and directors of the corporation were subordinates of the taxpayer. Its transactions were carried on under his direction and were restricted largely to operations in buying securities from or selling them to the taxpayer. While its ac-

¹ 308 U. S. —.

² 102 F. (2d) 456.

³ 103 F. (2d) 110, affirmed *sub nom. Griffiths v. Commissioner*, 308 U. S. —, No. 49, October Term 1939, decided December 18, 1939.

⁴ 47 Stat. 169, 179-80. "Sec. 23. Deductions from Gross Income.

"In computing net income there shall be allowed as deductions:

"(c) Losses by Individuals.—Subject to the limitations provided in subsection (r) of this section, in the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

"(1) if incurred in trade or business; or

"(2) if incurred in any transaction entered into for profit, though not connected with the trade or business;

counts were kept completely separate from those of the taxpayer, there is no doubt that Innisfail was his corporate self. As dealings by a corporation offered opportunities for income and estate tax savings, Innisfail was created to gain these advantages for its stockholder. One of its first acts was to take over an option belonging to the taxpayer for the acquisition by exchange of a block of Chrysler common stock. Through mutual transactions in buying and selling securities, and receiving dividends, the balance of accounts between Innisfail and the taxpayer resulted, on December 29, 1932, in an indebtedness from him to Innisfail of nearly \$70,000. On that date, as a partial payment on this indebtedness, a number of shares of stock were sold to the corporation by the taxpayer at market. The securities sold had cost the taxpayer more than the price charged to the corporation, and in carrying out the transaction the taxpayer had in mind the tax consequences to himself.

In computing his net taxable income for 1932, the taxpayer deducted as a loss the difference between the cost of these securities and their sale price to his wholly owned corporation. The Commissioner of Internal Revenue ruled against the claim, whereupon respondent paid the tax and brought this suit for refund in the United States District Court for the Southern District of New York. The case was tried before a jury and the verdict was adverse to the taxpayer's claim that the purported sales of these securities to Innisfail marked the realization of loss on their purchase. On appeal the judgment was reversed and the case remanded to the District Court for a new trial. It was the opinion of the Court of Appeals that the facts as detailed above, as a matter of law, established the transfer of the securities to Innisfail as an event determining loss.

Under Section 23(e) deductions are permitted for losses "sustained during the taxable year." The loss is sustained when realized by a completed transaction determining its amount.⁵ In this case the jury was instructed to find whether these sales by the taxpayer to Innisfail were actual transfers of property "out of Mr. Smith and into something that existed separate and apart from him" or whether they were to be regarded as simply "a transfer by Mr. Smith's left hand, being his individual hand, into his right hand, being his corporate hand, so that in truth and fact there

⁵ *Barnett v. Huff*, 288 U. S. 156, 161.

was no transfer at all." The jury agreed the latter situation existed. There was sufficient evidence of the taxpayer's continued domination and control of the securities, through stock ownership in the Innisfail Corporation, to support this verdict, even though ownership in the securities had passed to the corporation in which the taxpayer was the sole stockholder. Indeed this domination and control is so obvious in a wholly owned corporation as to require a peremptory instruction that no loss in the statutory sense could occur upon a sale by a taxpayer to such an entity.⁶

It is clear an actual corporation existed. Numerous transactions were carried on by it over a period of years. It paid taxes, state and national, franchise and income. But the existence of an actual corporation is only one incident necessary to complete an actual sale to it under the revenue act. Title, we shall assume, passed to Innisfail but the taxpayer retained the control. Through the corporate forms he might manipulate as he chose the exercise of shareholder's rights in the various corporations, issuers of the securities, and command the disposition of the securities themselves. There is not enough of substance in such a sale finally to determine a loss.

The Government urges that the principle underlying *Gregory v. Helvering*⁶ finds expression in the rule calling for a realistic approach to tax situations. As so broad and unchallenged a principle furnishes only a general direction, it is of little value in the solution of tax problems. If, on the other hand, the *Gregory* case is viewed as a precedent for the disregard of a transfer of assets without a business purpose but solely to reduce tax liability, it gives support to the natural conclusion that transactions, which do not vary control or change the flow of economic benefits, are to be dismissed from consideration. There is no illusion about the payment of a tax exaction. Each tax, according to a legislative plan, raises funds to carry on government. The purpose here is to tax earnings and profit less expenses and losses. If one or the other factor in any calculation is unreal, it distorts the liability of the particular taxpayer to the detriment or advantage of the entire tax-paying group.⁷

The taxpayer cites *Burnet v. Commonwealth Improvement Company*⁸ as a precedent for treating the taxpayer and his solely

⁶ 293 U. S. 465.

⁷ Cf. *Stone v. White*, 301 U. S. 532, 537.

⁸ 287 U. S. 415.

owned corporation as separate entities. In that case the corporation sold stock to the sole stockholder, the Estate of P. A. B. Widener. The transaction showed a book profit and the corporation sought a ruling that a sale to its sole stockholder could not result in a taxable profit. This Court concluded otherwise and held the identity of corporation and taxpayer distinct for purposes of taxation.⁹ In the *Commonwealth Improvement Company* case, the taxpayer, for reasons satisfactory to itself voluntarily had chosen to employ the corporation in its operations. A taxpayer is free to adopt such organization for his affairs as he may choose and having elected to do some business as a corporation, he must accept the tax disadvantages.¹⁰

On the other hand, the Government may not be required to acquiesce in the taxpayer's election of that form for doing business which is most advantageous to him. The Government may look at actualities and upon determination that the form employed for doing business or carrying out the challenged tax event is unreal or a sham may sustain or disregard the effect of the fiction as best serves the purposes of the tax statute. To hold otherwise would permit the schemes of taxpayers to supersede legislation in the determination of the time and manner of taxation. It is command of income and its benefits which marks the real owner of property.¹¹

Such a conclusion, urges the respondent, is inconsistent with the prior interpretations of the income tax laws and consequently unfair to him. He points to the decisions of four courts of appeals which have held losses determined by sales to controlled corporations allowable¹² and further calls attention to the fact that the

⁹ See also *Klein v. Board of Supervisors*, 282 U. S. 19; *Dalton v. Bowers*, 287 U. S. 404; *Burnet v. Clark*, 287 U. S. 410.

¹⁰ Cf. *Edwards v. Chile Copper Co.*, 270 U. S. 452, 456.

¹¹ *Lucas v. Earl*, 281 U. S. 111; *Corliss v. Bowers*, 281 U. S. 376; *Griffiths v. Commissioner*, 308 U. S. —, No. 49, October Term 1939, decided December 18, 1939.

¹² *Jones v. Helvering*, 71 F. (2d) 214 (April 23, 1934, reversing 18 B. T. A. 1225, decided February 18, 1930), cert. denied October 8, 1934, 293 U. S. 583; *Commissioner v. Eldridge*, 79 F. (2d) 629 (November 4, 1935, affirming 30 B. T. A. 1322, decided July 31, 1934); *Commissioner v. McCreery*, 83 F. (2d) 817 (May 13, 1936, affirming B. T. A. memorandum opinion of June 19, 1935); *Foster v. Commissioner*, 96 F. (2d) 130 (April 18, 1938, affirming B. T. A. memorandum opinion of December 23, 1935); *Commissioner v. Johnson*, 104 F. (2d) 140 (June 1, 1939, affirming 37 B. T. A. 155, decided January 21, 1938), affirmed by an equally divided Court, 308 U. S. —, No. 317, October Term 1939, decided December 11, 1939.

Board of Tax Appeals has consistently reached the same conclusion.¹³ But this judicial and administrative construction has no significance for the respondent. The Bureau of Internal Revenue has insistently urged since February 18, 1930, the date of the Board of Tax Appeals' decision in *Jones v. Helvering*,¹⁴ that a transfer from a taxpayer to a controlled corporation was ineffective to close a transaction for the determination of loss. Every case cited by respondent in the courts of appeals and before the Board of Tax Appeals found the Government supporting that contention. The Board's ruling in the *Jones* case was standing unreversed at the time of the transaction here involved, December 29, 1932. It was only after the transactions here involved and after the reversal of the Board in the *Jones* case on April 23, 1934, or this Court's refusal of certiorari on October 8, 1934, that the Board of Tax Appeals and the courts of appeals, over Government protests, ruled in line with the opinion of the Court of Appeals of the District of Columbia in the *Jones* case. If the Bureau's stand in the *Jones* case represented a change in administrative practice, there can be no doubt that the change operated validly at least from 1930 on.¹⁵ After the *Jones* defeat the Government sought relief in Congress and after the judgment in *Commissioner v. Griffiths*, *supra*, certiorari here on a conflict in principle between circuits. Certainly there was no acquiescence by the Government which would justify the taxpayer in relying upon prior interpretations of the law.¹⁶

Respondent makes the further point that the passage of Section 24(a) (6) of the Revenue Act of 1934¹⁷ which explicitly forbids any

¹³ *David Stewart v. Commissioner*, 17 B. T. A. 604; *Corrado & Galiardi, Inc. v. Commissioner*, 22 B. T. A. 847; *Edward Securities Corporation v. Commissioner*, 30 B. T. A. 918; *Ralph Hochstetter v. Commissioner*, 34 B. T. A. 791; *John Thomas Smith v. Commissioner*, *supra*, 40 B. T. A. 387.

¹⁴ 18 B. T. A. 1225, a rehearing affirmed May 26, 1932, unpublished.

¹⁵ *Helvering v. Wilshire Oil Co.*, 308 U. S. —, No. 1, October Term 1939, decided November 6, 1939.

¹⁶ Cf. *Sanford v. Commissioner*, 308 U. S. —, No. 34, October Term 1939, decided November 6, 1939.

¹⁷ 48 Stat. 680, 691. "Sec. 24. Items not Deductible.

"(a) General Rule.—In computing net income no deduction shall in any case be allowed in respect of—

"(6) Loss from sales or exchanges of property, directly or indirectly, (A) between members of a family, or (B) except in the case of distributions in liquidation, between an individual and a corporation in which such individual owns, directly or indirectly, more than 50 per centum in value of the outstand-

deduction for losses determined by sales to corporations controlled by the taxpayer is convincing proof that the law was formerly otherwise. This does not follow. At most it is evidence that a later Congress construed the 1932 Act to recognize separable taxable identities between the taxpayer and his wholly owned corporation. As the new provision goes much farther than the former decisions in disregarding transfers between members of the family it may well have been passed to extend as well as clarify the existing rule. The suggestion is not sufficiently persuasive to give vitality to a futile transfer.

The taxpayer has preserved two objections to the district judge's rulings on the evidence. He claims that evidence as to transactions between the taxpayer and the corporation which took place prior to the sale here involved was remote and highly prejudicial. We think it apparent that this evidence was entirely relevant to the present issue; the history of the taxpayer's relations with the corporation shed considerable light on the actual effect of the sale in question. The second contention is that the district judge charged the jury to give less effect to the book entries of Smith and the corporation than they were entitled to under the applicable book entry statute.¹⁸ The alleged departure from the statute has but dubious support in the record, resting on a single statement of the judge lifted from its context as part of an extended colloquy with counsel. In the circumstances there is no merit in the claim of prejudice to the taxpayer.

The judgment of the Circuit Court of Appeals is reversed and that of the District Court affirmed.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

ing stock. For the purpose of this paragraph—(C) an individual shall be considered as owning the stock owned, directly or indirectly, by his family; and (D) the family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants."

¹⁸ 49 Stat. 1561, 28 U. S. C. § 695.

SUPREME COURT OF THE UNITED STATES.

No. 146.—OCTOBER TERM, 1939.

Joseph T. Higgins, Collector of Internal Revenue for the Third District of New York, Petitioner,

vs.

John Thomas Smith.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[January 8, 1940.]

Mr. Justice ROBERTS.

I think the judgment should be affirmed. To reverse it is to disregard a rule respecting the separate entity of corporations having basis in logic and practicality and which has long been observed in the administration of the revenue acts.

Since the inception of the system of federal income taxation, capital gains have been taxed and certain capital losses have been allowed as credits against such gains. In order that this system might be practical it has been necessary to select some event as the criterion of realization of gain or loss. The revenue laws have selected the time of the closing of a capital transaction as the occasion for reckoning gain or loss on a capital asset. A typical method of closure is a sale of the asset.

As the sale is voluntarily made by the taxpayer, his determination when he shall sell affects his capital gain or loss. He, therefore, in a sense, controls the question whether, in a given taxable year, he must pay tax on a realized gain or may claim credit for a realized loss. Of course such a sale must be bona fide and title must pass absolutely. In the present instance the sale and transfer were such, and, as the Circuit Court of Appeals held, there was not a scintilla of evidence to the contrary for the jury's consideration. A taxpayer who pretends he has made a sale when in fact he has a secret agreement which leaves him still, for all practical purposes, the owner of the thing sold, is but committing a fraud upon the revenue.

If the sale is bona fide, if title in fact passes irrevocably to another, that other takes as his basis, in reckoning his gain and loss,

the price he paid for the asset; and upon his future disposition of it there will be a new reckoning of gain or loss with respect to such disposition. Here, if Innisfail either sold to the respondent or to a third party it would have to reckon gain or loss on the sale. If it distributed the asset in liquidation the respondent would be subject to a tax liability on the receipt of his dividend. The sole question, then, is whether, as matter of law, a bona fide and absolute sale to a wholly owned corporation can constitute a completed transaction, determining a loss.

The problem as to how a sale to a corporation wholly owned or wholly controlled by an individual taxpayer is to be treated is not a new one. The existence of such corporations and the dealings between them and their stockholder or stockholders have long been understood. Congress was not ignorant of the problem.¹ At the outset Congress might well have adopted the policy that a sale by the stockholder to the corporation, or vice versa, should be disregarded, and the stockholder treated as in effect the owner of the capital asset until its sale to a stranger. On the other hand, it would be a practical policy to recognize the separate entity of the corporation, to treat a transfer at current value for adequate consideration occurring between it and its sole stockholder as closing a transaction for the purpose of reckoning either gain or loss, and then to tax the vendee upon his or its gain or loss upon a subsequent transfer by comparison of the basis on which the asset was acquired and the amount realized on final disposition by the vendee. In fact, the latter course was adopted and was consistently followed until 1934 when Congress dealt with the subject.

This court, speaking by Mr. Justice Holmes, said, in *Klein v. Board of Supervisors*, 282 U. S. 19, 24: " . . . But it leads nowhere to call a corporation a fiction. If it is a fiction it is a fiction created by law with intent that it should be acted on as if true. The corporation is a person and its ownership is a nonconductor that makes it impossible to attribute an interest in its property to its members."

¹ The Revenue Act of 1932, c. 209, 47 Stat. 169, 196, § 112(b)(5), provided: "No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation; . . ."

In this view assets received on the liquidation of a one-man corporation constitute taxable income to the sole stockholder.² Likewise, losses sustained by a corporation wholly owned by one individual may not be reported and claimed in the individual tax return of the latter.³ And the sole stockholder and his controlled corporation may not tack successive periods of ownership to make up the two years required for an asset to become, within the meaning of the statute, a capital asset.⁴

This court has found that a taxable gain was realized in a case where a wholly owned corporation sold securities to its sole stockholder.⁵ Every element appearing in that case is paralleled here, as a comparison of the facts stated in the opinions in the two cases will demonstrate. This court said, in the earlier case, referring to the corporation: "The fact that it had only one stockholder seems of no legal significance," and held the corporation a separate taxable entity. It is now said, however, that there is no inequity, in not applying the same rule to losses as to gains because the taxpayer who exercises the option to conduct a portion of his business through the instrumentality of a wholly owned corporation does so in the full knowledge that, if he does, gains shown on sales by him to the corporation will be taxed whereas losses on such sales will not be allowed as deductions. As hereafter will be shown, this is now true in virtue of the amendment embodied in the Revenue Act of 1934 but it was not true as the law stood before the adoption of that amendment.

In 1921 the Treasury was first called upon to deal with a loss deduction arising out of a sale to a wholly owned corporation. In that year it published Law Opinion 1062.⁶ It was held that if the sale was bona fide and passed title absolutely to the controlled corporation, even though the sale was made with the intent of reducing the tax liability of the vendor it fell within the provisions of the revenue act concerning the reckoning of gain or loss upon a closed transaction. So far as I am informed, the Treasury followed this rule in administering the various revenue acts for years after it was issued. The first evidence of a change in its position was the

² *France Co. v. Commissioner*, 88 F. (2d) 917; *Core v. Handy*, 24 F. Supp. 178; *John K. Greenwood*, 1 B. T. A. 291.

³ *Dalton v. Bowers*, 287 U. S. 404; *Meritt v. Commissioner*, 79 F. (2d) 304.

⁴ *Webber v. Knox*, 97 F. (2d) 931.

⁵ *Burnet v. Commonwealth Improvement Co.*, 287 U. S. 415.

⁶ 4 C. B. 168, cited with approval in *G. T. M.* 3008 VII-1 C. B. 235.

refusal of the Commissioner of Internal Revenue to recognize losses resulting to taxpayers from a bona fide sale of bonds owned by them to a wholly owned corporation at the current market price.⁷ The Board of Tax Appeals sustained the Commissioner, but the Court of Appeals of the District of Columbia reversed the Board in *Jones v. Helvering*, 71 F. (2d) 214. The decision was rendered April 23, 1934. The Commissioner sought certiorari which was denied October 8, 1934.⁸ The same result has been reached by three other Circuit Courts of Appeal.⁹ The Board of Tax Appeals followed these decisions.¹⁰ In the meantime the Circuit Courts of Appeal had decided numerous cases which are, in principle, indistinguishable.¹¹ This court having denied certiorari in *Jones v. Helvering*, *supra*, decided *Gregory v. Helvering*, 293 U. S. 465, in the following January. It cited the *Jones* case with approval, at p. 469, saying: "The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted."

So well settled had the judicial interpretation become that the Treasury determined to recommend that Congress amend the statute.¹² The result was the adoption of Sec. 24(a) (6) of the Revenue Act of 1934.¹³ The Committee reports disclose that Congress thought it necessary to change the statute in order to render non-deductible a loss claimed on a sale to a wholly owned or a controlled corporation.¹⁴ Subsequent hearings before the Joint Commission

⁷ *Jones v. Commissioner*, 18 B. T. A. 1225 (1930).

⁸ 293 U. S. 583.

⁹ *Commissioner v. Eldridge*, 79 F. (2d) 629 (C. C. A. 9); *Commissioner v. McCreery*, 83 F. (2d) 817 (C. C. A. 9); *Helvering v. Johnson*, 104 F. (2d) 140 (C. C. A. 8); *Foster v. Commissioner*, 96 F. (2d) 130 (C. C. A. 2); *Smith v. Higgins* (the instant case), 102 F. (2d) 456 (C. C. A. 2).

¹⁰ *David Stewart*, 17 B. T. A. 604; *Corrado & Galiardi, Inc.*, 22 B. T. A. 847; *Ralph Hochstetter*, 34 B. T. A. 791; *John Thomas Smith*, 40 B. T. A. 387, involving prior years of the taxpayer in this case.

¹¹ *Iowa Bridge Co. v. Commissioner*, 39 F. (2d) 777; *Taplin v. Commissioner*, 41 F. (2d) 454; *Commissioner v. Van Vorst*, 59 F. (2d) 677; *Marston v. Commissioner*, 75 F. (2d) 936; *St. Louis Union Trust Co. v. United States*, 82 F. (2d) 61; *Sawtell v. Commissioner*, 82 F. (2d) 251; *Commissioner v. Edward Securities Co.*, 83 F. (2d) 1007, affirming 30 B. T. A. 918.

¹² In the Hearings before the Joint Committee on Tax Evasion and Avoidance, 1937, p. 206, it appears that the Solicitor General considered the law so well settled that he refused to apply for certiorari in the *Eldridge* case, *supra*, note 9, although the Treasury recommended such action.

¹³ 48 Stat. 680, 691.

¹⁴ See the report of the Committee on Ways and Means of the House of Representatives, H. R. 704, 73d Cong., Second Sess., p. 23; Senate Report 588, 73d Cong., Second Sess., p. 27; see also the hearings before the Committee on Ways and Means, Revenue Revision, 1934, p. 134.

on Tax Evasion and Avoidance, 1937, p. 207, indicate the same understanding on the part of the Bureau of Internal Revenue and of Congress that the rule of law in effect prior to the adoption of the amendment in 1934 was changed by that legislation. The amendment lists among items not deductible the following:

"(6) Loss from sales or exchanges of property, directly or indirectly, (A) between members of a family, or (B) except in the case of distributions in liquidation, between an individual and a corporation in which such individual owns, directly or indirectly, more than 50 per centum in value of the outstanding stock. For the purpose of this paragraph—(C) an individual shall be considered as owning the stock owned, directly or indirectly, by his family; and (D) the family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants."

Plainly, prior to 1934, taxpayers were justified in relying, first, upon the Treasury ruling on the subject and, secondly, upon the uniform decisions of the courts in claiming deductions for losses on sales to controlled corporations. After the passage of the amendment they were on notice that this was no longer permissible.

I turn then to the situation here presented. The claims of this taxpayer, as I have said, had been sustained for prior years by the Board of Tax Appeals.¹⁵ The Congress had enacted that subsequent to 1934 the taxpayer could not claim such losses. Notwithstanding the earlier decisions of the respondent's case and those of other taxpayers against the Government's present contention, the Commissioner of Internal Revenue, after the adoption of the Act of 1934, namely on March 11, 1935, served a notice of deficiency upon the respondent respecting losses claimed in his return for the year 1932 on sales to Innisfail. Thus the Treasury repudiated the position it had taken in asking that the law be amended to cover cases of this kind; reversed its position in acquiescing in the adjudication of the respondent's tax liability for earlier years and sought, now that it had obtained an amendment of the law operating prospectively, to reach back into sundry unclosed ones,—this one amongst others,—and to attempt to obtain decisions reversing the settled course of decision. I think this court should not lend its aid to the effort.

I am of opinion that where taxpayers have relied upon a long unvarying series of decisions construing and applying a statute,

¹⁵ *Supra*, Note 10.

the only appropriate method to change the rights of the taxpayers is to go to Congress for legislation. In my view, the resort to Congress, on the one hand, for amendment, and the appeal to the courts, on the other, for a reversal of construction, which, if successful, will operate unjustly and retroactively upon those who have acted in reliance upon oft-reiterated judicial decisions, are wholly inconsistent.

I am of opinion that the courts should not disappoint the well-founded expectation of citizens that, until Congress speaks to the contrary, they may, with confidence, rely upon the uniform judicial interpretation of a statute. The action taken in this case seems to me to make it impossible for a citizen safely to conduct his affairs in reliance upon any settled body of court decisions.

Mr. Justice McREYNOLDS joins in this opinion.